THE CONVEYANCING ACTS, 1881, 1882

(44 & 45 Vic., Cap. 41, and 45 & 46 Vic., cap. 39),

AND

THE SOLICITORS' REMUNERATION ACT, 1881

(44 & 45 Vic., cap. 44),

AND THE

GENERAL ORDER ISSUED THEREUNDER,

WITH COMPREHENSIVE TABLES OF CONVEYANCING COSTS,

INTRODUCTION, SUMMARY, PRACTICAL NOTES, FORMS AND CONVEYANCING PRECEDENTS,

AND AN APPENDIX CONTAINING

THE VENDOR AND PURCHASER ACT, 1874;

THE SETTLED ESTATES ACT, 1877; AND

THE SETTLED LAND ACT, 1882;

WITH CAREFUL CROSS-REFERENCES AND COPIOUS INDEX.

By J. S. RUBINSTEIN,

Solicitor of the Supreme Court.

FOURTH EDITION.

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PREFACE TO THE FOURTH EDITION.

WITHIN a year a Fourth Edition of this Work has been called for. As now revised and enlarged, the plan is as follows:—

1. In the Introduction a general view is presented of the scope of the Conveyancing Acts, 1881 and 1882, and the Solicitors' Remuneration Act, 1881, and of the leading changes they make.

2. A full and precise Summary of the Conveyancing Acts is given, section by section, with practical Notes and cross-references. In this way the effect of the Acts are set out as far as possible without needless technicality, and free from the confusion that might be caused by the multiplicity of sub-sections. To state the effect clearly saves much commentary that would otherwise be needed.

3. The Solicitors' Remuneration Act, 1881, and the General Order issued thereunder, is summarised and noted in like manner.

4. The Conveyancing Acts, the Solicitors' Remuneration Act, and the General Order are printed in

their entirety, but to every section and clause is appended a reference to the Summary and Notes.

5. A full synopsis of the new scales of charges, in the form of Tables, is added.

6. A selection of precedents, adapted to the practice under the Acts, and embracing every form in common use affected by the Acts, is supplied.

7. Lord Cranworth's Act, 1860, the Vendor and Purchaser Act, 1874, the Settled Estates Act, 1877, and the Settled Land Act, 1882 (all intimately connected with the Conveyancing Acts), are printed at length.

8. A copious Index is added.

The merit claimed for this arrangement is that the Acts respectively, instead of being broken up into detached fragments, isolated by surrounding Notes, can readily be referred to as a whole, while the Summary and Notes (like a translation and commentary) explain and illustrate their practical effect.

J. S. R.

5, Raymond Buildings,
Gray's Inn,
November, 1882.

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THE CONVEYANCING ACTS, 1881 & 1882.

INTRODUCTION.

THE Conveyancing Acts 1881 & 1882, have been passed to simplify conveyancing, and to confer on trustees and mortgagees certain powers. The Act of 1882 is chiefly supplemental, but in one or two instances amends the Act of 1881.

As long ago as 1845, Lord Brougham's Act provided that in every conveyance of freeholds purporting to be made in pursuance of that Act, the covenants for right to convey, for quiet enjoyment free from incumbrances, for further assurance, and for production of title-deeds, and the trustee's covenant against incumbrances, need not be set out at length, but should be sufficiently incorporated by their titles; and that, in the absence of any special exception, the general words and all the estate clause should be implied in every such deed. This Act has remained almost a dead letter. Lord Cranworth's Act of 1860 did not contain any provisions to affect an ordinary purchase-deed, but gave a mortgagee statutory powers to sell, to insure, and to appoint a receiver. These powers were, however, unduly restricted, and in practice it has not been usual to rely thereon, at least without special variations. The present Acts seems likely to succeed where the former Acts have failed, and that mainly for two reasons: (1) because of their wide sweep—they apply to property of every

kind; (2) but chiefly because it will be easy and advantageous to adopt their provisions. These, moreover, are in many cases not permissive, but must apply unless expressly excluded. In some cases the provisions are even imperative, and cannot be excluded at all.

The leading changes and provisions of the Acts may be summarised as follows:—*

I.—As to Contracts for Sale.

1. A purchaser of a leasehold interest is not entitled to call for the title to the leasehold reversion. (Sec. 3.) This is an extension of the principle introduced by the Vendor and Purchaser Act, 1874, which provided that the title of the lessor should not be required.

2. Evidence of title prior to the date fixed by law or by the contract is not to be required, even although referred to by the abstract. (Sec. 3.)

3. The production of the last receipt for rent payable before completion is to be sufficient evidence that all the covenants of the lease have been duly performed. (Sec. 3.)

4. The purchaser is to bear the expense of the production and obtaining copies of all deeds and documents not in the vendor's possession, and of all certificates, declarations, and the like, required for the verification of the title. (Sec. 3.)

II.—As to Purchasers.

1. Purchasers can have searches for judgments, crown debts, *lites pendentes* and annuities made by officers of the

* Where in the Summary the number only of the section appears, the section referred to will be found in the Act of 1881. The figures 1882 follow each reference to the sections of the Act of 1882.

Court, and protection is given to persons relying upon such searches. (Sec. 2, 1882.)

2. The circumstances under which a purchaser is to be affected by notice are defined (Sec. 3, 1882), thus restricting the doctrine of constructive notice.

III.—As to Conveyances.

1. Freehold land, or a thing in action, may be conveyed by a husband to his wife, or by a wife to her husband. (Sec. 50.)

2. The word 'grant' is rendered unnecessary, and estates in fee simple, in tail, and in tail male and female may be created by the use of these titles without using the word 'heirs,' or other words of limitation. (Secs. 49 & 51.)

3. The general words and 'all the estate' clause are implied. (Secs. 6 & 63.)

4. Covenants for title are implied if certain words are used. Thus, in an ordinary conveyance, it will not be necessary to insert covenants by the vendor for right to convey, for quiet enjoyment, for freedom from incumbrances, and for further assurance, if he conveys and is expressed to convey as 'beneficial owner.' And subject to the same condition, if the conveyance is of leaseholds (the Act substitutes the word 'conveyance' for 'assignment'), a further covenant that the lease is valid is implied. (Sec. 7.)

Where a trustee, however, or a mortgagee conveys, the only covenant implied is the usual one against incumbrances. (Sec. 7.)

5. A simple acknowledgment is substituted for the covenant to produce deeds, and the ordinary obligations of such a covenant are implied. (Sec. 9.)

6. A covenant binds the heirs executors and administrators of the covenantor, and the benefit of a covenant extends to the heirs executors administrators and assigns of the covenantee as the case requires. It is therefore unnecessary to name them. (Secs. 58 & 59.)

7. It is unnecessary to indorse a receipt if a receipt is contained in the body of the deed, and payment can be made to a solicitor producing a deed duly executed without further authority. (Secs. 54 & 56.)

8. A purchaser cannot require a conveyance to be executed in his presence, but is entitled, at his own expense, to have it attested by any person he may appoint. This is imperative. (Sec. 8.)

IV.—As to Mortgages.

1. Covenants for title by the mortgagor are implied, and where the mortgage is of leaseholds, the further covenants that the lease is valid and for payment of rent and performance of covenants. (Sec. 7.)

2. The following powers are implied. (Secs. 18 & 19.)

(1) To sell, if default be made in paying off after three months' notice, or if the interest is two months in arrear, or on breach of any other provision.

(2) To insure.

(3) To appoint a receiver, with powers of management, at any time after the power of sale can be exercised.

(4) To cut timber.

(5) To grant, if the mortgagee is in possession, agricultural occupation and building leases, subject to certain conditions.

3. A mortgagor, while in possession, has an implied right to grant similar leases, subject to the same conditions. (Sec. 18.)

4. The mortgagor has the right to require the mortgagee to transfer the mortgage instead of reconveying the property. (Sec. 15.) This right is enforceable by subsequent encumbrancers, and by the mortgagor according to priority. (Sec. 12, 1882.)

5. A statutory form of mortgage is given, in which are implied, in addition to the covenants and powers already mentioned, a covenant by the mortgagor for payment of principal and interest at the appointed times, and the usual proviso for redemption on payment thereof. (Sec. 26.)

6. A mortgagor is entitled to inspect the documents of title and to take copies thereof at all reasonable times. This is imperative. (Sec. 16.)

7. Consolidation of mortgages made subsequent to the Act is abolished. (Sec. 17.)

8. In cases where money is advanced by two or more persons, it is to be assumed, unless the contrary be stated, that it was advanced on a joint account, and the receipt of the survivor is sufficient. (Sec. 61.)

9. Lands mortgaged may be sold, without the concurrence of the mortgagee, by payment into Court of a sum sufficient to satisfy the advance, interest and costs. This is imperative. (Sec. 5.)

10. Freehold estates vested by way of mortgage in any person solely, are, on his death, notwithstanding any testamentary disposition, to go to his personal representatives. This is imperative. (Sec. 30.)

11. In an action for redemption or foreclosure, the Court may order a sale. (Sec. 25.)

12. The provisions regarding general words and 'all the estate' clause, and as to the covenants binding and extending to the heirs and personal representatives mentioned when speaking of conveyances, apply equally to mortgages.

V.—As to Leases.

1. A contract for a lease made under a power contained in any instrument is not to form part of the title to the lease. (Sec. 4, 1882.)

2. The rent and the lessor's and lessee's covenants respectively run with the reversion, and can be apportioned so as to prevent such covenants losing their force on account of any technical rule consequent on a devolution of interest or other event, or the severance of the reversionary estate. (Secs. 10 & 11.)

3. New and extensive powers are given to the Court to grant relief against forfeiture, and, in substance, relief can always be obtained where damages are sufficient compensation, except in the case of a covenant not to assign, or of a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest. The law relating to relief against forfeiture in case of non-payment of rent is left unchanged. (Sec. 14.)

4. A term that originally was not less than 300 years, of which there is not less than 200 years unexpired, and where there is no money rent attached, can be turned into a fee simple by the party entitled to the term declaring by deed that from and after the execution thereof the term shall be enlarged into

a fee simple. (Sec. 65.) If the term, however, is derived out of a longer term, the section will only apply if such longer term is itself capable of being so enlarged. (Sec. 11, 1882.)

All these provisions as to leases are imperative.

VI.—As to Trustees and Executors.

1. Enlarged powers are given for the appointment of new trustees, and on an appointment the number may be increased, or in certain cases reduced. (Sec. 31. to 33).

2. Separate trustees may be appointed for distinct parts of the trust property. (Sec. 5, 1882.)

3. Trust property is to vest in new trustees by a simple declaration in the deed of appointment without any conveyance. (Sec. 34).

4. Trustees are given enlarged powers to sell trust property, and their receipts are made sufficient discharges. (Sec. 35 & 36).

5. Power is given to executors and trustees to compound any debts. (Sec. 37).

6. Freehold estates vested by way of trust in any person solely, are on his death, notwithstanding any testamentary disposition, to vest in his personal representatives. (Sec. 30.)

VII.—As to Married Women.

1. If a married woman has property subject to a restraint upon anticipation, the Court may, for her benefit and with her consent, bind her interest therein. (Sec. 39).

2. A married woman may execute a valid power of attorney without her husband's concurrence. (Sec. 40).

3. A married woman can convey freeholds or leaseholds to

her husband, and her husband can similarly convey to her alone. (Sec. 50.)

4. One commissioner is substituted for two in taking acknowledgments of married women, and the affidavit and certificate are abolished. (Sec. 7, 1882.)

VIII.—As to Infants.

1. Freehold or leasehold lands, the property of an infant, are to be deemed settled estates within the Settled Estates Act, 1877. (Sec. 41).

2. Provision is made for the appointment of trustees to manage such estates, and ample discretionary powers are given, both as to management, maintenance, and accumulations, (Sec. 42).

IX.—As to Rent-Charges and other Annual Sums.

1. The remedies provided for the recovery of rent-charges and the like are, after 21 days' default, distress; after 40 days', entry into possession, and power to demise to a trustee to raise the rent-charge and arrears. (Sec. 44.)

2. Quit rents and other perpetual charges may be redeemed by the payment or tender of an amount to be certified by the copyhold commissioners. (Sec. 45.)

X.—As to Powers of Attorney.

1. An attorney may, if authorised by the power, execute any document or do any act in his own name. (Sec. 46.)

2. If the power is revoked by death or other event, any payment or act properly made or done by the attorney, without notice of the revocation, is valid. (Sec. 47.)

3. An irrevocable power of attorney for value remains valid

in favour of a purchaser, notwithstanding the death, marriage, lunacy, or bankruptcy of the donor. (Sec. 8, 1882.)

4. An irrevocable power of attorney for a fixed time, not exceeding a year, whether for value or not, remains valid in favour of a purchaser, notwithstanding the death, &c., of the donor. (Sec. 9, 1822.)

5. Provisions are contained for filing original powers of attorney at the Central Office of the Supreme Court and obtaining office copies. (Sec. 48.)

6. A married woman can execute a power of attorney without the concurrence of her husband. (Sec. 40.)

XI.—Miscellaneous.

1. The long and cumbersome ending to statutory declarations is abolished. (Sec. 68.)

2. Solicitors and trustees relying on any of the powers, authorities and provisions of the Act are protected. (Sec. 66.)

3. Provision is made for obviating personal service of notices upon lessors, lessees, mortgagors and mortgagees. (Sec. 67.)

4. All matters under the Act are to be assigned to the Chancery Division of the High Court of Justice. (Sec. 69.)

To enumerate these changes is to manifest their importance. It must be apparent how much needless complexity may be avoided by reliance upon the Acts. Some provisions it may indeed be found necessary to exclude, or rather to vary, or oftener still to amplify. In the case of a contract for sale, it may be that the liability thrown on the purchaser to bear the expense attending production and the like of documents not in the vendor's possession is too serious to be incurred except in cases where the title is known to be simple; if the purchaser

is to verify the vendor's title, it may be as rash in future to sign an open agreement to purchase as it was formerly to sign an open agreement to sell. The provisions as to conveyances, again, may at times need to be supplemented; on a sale of leaseholds, for instance, the usual covenant by the assignee to pay rent and perform covenants and to indemnify the assignor therefrom must be added, since, strangely enough, it has been omitted from the list of implied covenants. And mortgagees will probably, for their own protection, insist on restricting, if not excluding, the mortgagor's right to grant leases, and will take to themselves absolute power to lease upon default, and that on any conditions they think fit; and will, by express stipulation, preserve the existing right to consolidate. But to supplement and enlarge the provisions of the Acts, not to restrict or evade them, will, it may be hoped, be the aim of the profession.

The introduction of the Conveyancing Act 1881, necessitated a re-consideration of the principle on which professional charges depended. It was too much to expect that the profession would heartily adopt the new Act while the old baneful system of proportioning remuneration to prolixity existed, and consequently to remedy the admitted evils of the old system and to lead the professsion to adopt the new Act, the Solicitors' Remuneration Act 1881, was at the same time enacted.

This Act, which applies only to England and Ireland, empowers the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Incorporated Law Society of those countries, and in England the presidents of one of the provincial law societies, to be nominated by the Lord Chancellor, or any three of them, the Lord Chancellor being one, to make general orders prescribing and regulating

the remuneration of solicitors in conveyancing and other non-contentious business. One month at least before any general order shall be made, a copy thereof is to be submitted to the Council of the Incorporated Law Society, to enable them to offer observations thereon, and which observations are to be considered by the Lord Chancellor and other authorised persons, and the General Order may be altered in accordance with the observations or not as the authorities see fit. The principle of remuneration can, in the General Order, be settled upon the basis of a commission or by a gross sum, or in any other mode, and certain considerations are specified which may regulate the amount of remuneration, and liberty is given for the Order to authorise the taking by a solicitor of security for future costs and the allowance of interest. Before the Order is to take effect, it must be laid one month previously before each House of Parliament, and upon an address, presented to the Queen by either House, the whole or part may be disallowed. The Act then empowers solicitors to make agreements with their clients in respect to conveyancing matters before, after, or in the course of the business, for the remuneration of the solicitor either by a gross sum, by percentage, salary or otherwise; the agreement is to be in writing and signed by the party to be bound thereby, or by his agent, and may or may not cover all disbursements. It may be sued on, impeached, and set aside like any other agreement not relating to the remuneration of solicitors; and if, under any order for taxation of costs, such an agreement, being relied upon by the solicitor, shall be objected to by the client as unfair or unreasonable, the taxing master may inquire into the facts and certify the same to the Court, and the Court is thereupon empowered to cancel the agreement or reduce the

amount payable thereunder. The Attorneys' and Solicitors' Act 1870, is not to apply to any business to which the present Act relates.

This Act was passed on the 24th of August, 1881, and on the 10th August, 1882, the General Order was, in pursuance of the provisions of the Act, laid before both Houses of Parliament. As, however, the General Order, according to the terms thereof, is not to come into operation until the 1st of January, 1883, it is still open for an address, seeking the disallowance of the Order, to be moved and carried; but the probabilities of this being done is so remote, that the Order may be safely treated as settled law.

It is noticeable that the Order is signed by four only out of the five authorised persons, and that the President of the Incorporated Law Society has withheld his signature; this is to be regretted, as the profession would have felt more confidence in the fairness of the scale had it been signed by the officer who, as the mouthpiece of the council of the Society, represents the best interests of the profession.

As to the Order itself, it provides that, in the case of completed sales, purchases and mortgages, the remuneration shall be according to the scale set out in Part I. of schedule 1; that in respect of certain specified descriptions of leases and agreements for leases, the scale of charges, if the same be completed, is to be that prescribed in Part II. of schedule 1; and that in respect of conveyancing matters outside of those enumerated, or in respect of uncompleted matters of the kind before mentioned, the remuneration is to be regulated according to the present system, as altered by schedule 2 of the Order. The remuneration prescribed by schedule 1 is to be exclusive of

all disbursements other than law stationers' charges and allowance for time of the solicitor and his clerks, and for copying, and parchment, and other similar expenses, and is not to cover extra work occasioned by changes occurring in the course of business, such as the death or insolvency of the party to the transaction, nor is it to include any proceedings in any Court. The Order authorises additional remuneration for special exertion in carrying through a matter in an exceptionally short space of time, if done upon request, and allows a solicitor, by giving notice in writing before commencing any business, to elect that his charges shall be according to the present system as altered by schedule 2, but if no such notice shall be given, his charges are to be fixed by the scale; and it further contains a provision enabling a solicitor to take from his client security for costs in respect of business to be done, and for interest on the amount when ascertained, either by agreement or taxation. A solicitor is to be entitled to charge interest at four per cent. per annum, and his disbursements and costs, whether by scale or otherwise, from the expiration of one month from delivery of his bill and demand for payment; and where the costs are payable by an infant, or out of a fund not presently available, such demand may be made on the parent or guardian, or trustee, or other person liable.

Each of the scales set out in Part I. and Part II. of schedule 1 is followed by rules explaining or regulating the same. Notes thereon, where considered necessary, will be found in the summary of the Order.

It will be noticed that the scale authorises charges for negotiating a sale or purchase by private contract, or for

conducting a sale by public auction. These charges are to be made only where no commission is payable to an auctioneer, and the inference seems irresistible that the authorities consider that the work hitherto done by the auctioneer may be properly discharged by the solicitor. In some parts of the country, indeed, sales have been conducted by solicitors, but the practice was local and exceptional, and in future it may not improbably be much more widely spread. It would be, perhaps, going too far to say that this official recognition of the right of a solicitor to act as auctioneer will prove an unalloyed advantage, but it may not improbably be found that in many cases such a change will be a gain to the public.

THE

CONVEYANCING ACTS.

SUMMARY AND PRACTICAL NOTES.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

(44 & 45 Vic. c. 41.)

SUMMARY AND PRACTICAL NOTES.

THE object of the Act is to simplify Conveyancing, and to give trustees, mortgagees and others various powers usually inserted in deeds and wills. Object.

The Act may be cited as the Conveyancing and Law of Property Act, 1881; it operates from the 31st of December, 1881, and does not extend to Scotland, but with slight modification applies to Ireland. Sec. 1. Sub-secs. 1 2, 3, p. 109. Short title. Commencement. Extent.

The following terms are defined: — (1) Property, (2) Land, (3) Income and Possession in relation to Land, (4) Manor, (5) Conveyance and convey, (6) Mortgage, Mortgage-money, Mortgagor, Mortgagee and Mortgagee in possession, (7) Incumbrance and Incumbrancer, (8) Purchaser, Purchase and Sale, (9) Rent and Fine, (10) Building purposes and Building Lease, (11) Mining Lease, (12) Will, (13) Instrument, (14) Securities, (15) Bankruptcy and Bankrupt, (16) Writing, (17) Person, (18) Court. Sec. 2. Sub-secs. 1 to 18, p. 109. Interpretation.

NOTE.—The widest meaning is given in interpreting each term—*e.g.*, "Property" includes real and personal property and any interest

applies it is not to bind to a greater extent than would a contract containing similar stipulations. Sec. 3. p. 112.

NOTE.—By this section material alterations are made. Prior to the Vendor and Purchaser Act, 1874, in the absence of a provision to the contrary, a vendor was bound to deduce and verify his title for 60 years, but that Act reduced the period to 40 years, except in certain cases where an earlier title might be required before that Act. These are (1) advowsons, where a title may be required for at least 100 years; (2) long leaseholds and reversionary interests, in which case the creation of the term or interest must be shown: (3) tithes and other crown grants where the original grant must be shown. In the latter cases the root of title must be shown, and in addition a title for forty years. (*Frend v. Buckley*, L. R. 5 Q. B. 213). The same Act introduced other provisions which had been usually inserted in properly prepared contracts. (*See* Vendor and Purchaser Act, 1874, Appendix p. x.). The present Act adds to the provisions which may now be omitted.

It is to be observed that in the case of the *assignment* of an underlease, the title of the lessee is not to be required, though the right to make objection or inquiry does not appear to be barred. But if the lessee contract to *grant* an underlease, he will still have to prove his title, though the Vendor and Purchaser Act relieves a freeholder from that liability. At the same time the lessee is in all cases taken to have constructive notice of his lessor's title. (*Patman v. Harland*, 17 Ch. D. 353.) If the lease, however, be one by a sub-lessee (a sub-sub-lease) then, by the provisions of sec. 13, sub-sec. 1, the intended lessee is not entitled to call for his lessor's title. Sub-sec. 1.

Though a purchaser is not to make any inquiry or objection prior to the time prescribed or stipulated for the commencement of the title, he will still be entitled to insist upon defects appearing on the face of the abstract (*Sellick* v. *Trevor*, 11 M. & A.) or objections discovered *aliunde* (*Waddell v. Wolfe*, L. R. 9 Eq. 515; *Smith v. Robinson*, 13 Ch. D. 148; *Darlington v. Hamilton*, Kay 550.) There may be room for doubt whether, in the case of a will, the title should be held to commence from the date of the will or of the testator's decease. Sub-sec. 3.

As the last receipt for rent is, by sub-secs. 4 and 5, only conclusive evidence that the covenants of the lease have been performed, *unless the contrary appears*, it will still be necessary in conditions of sale to provide that the last receipt is to be taken as *conclusive* evidence on this point. Sub-secs. 4 5.

It may be a question whether deeds in the hands of the vendor's mortgagee are to be considered as constructively in the vendor's possession, or whether the expense of their production must now be borne by the purchaser. The provision that the purchaser shall bear the expense of production, and of obtaining abstracts or copies of all deeds and documents, and of all certificates, declarations, and the Sub-sec. 6.

Sec. 3.
p. 112.

like, not in the vendor's possession, casts a new and serious liability on the purchaser, and it may be questioned how far the alteration was desirable. It is true the stipulation was usually inserted in conditions of sale, but it rested with a purchaser to decide whether or not he would purchase subject to such a condition; and if he consulted his legal adviser, the latter generally satisfies himself that the vendor could deduce such a title that no serious liability was likely to be imposed upon the purchaser by the stipulation; but in future, in the absence of any such stipulations, or even in a case where the contract provides that the sale is subject to the approval of the title by the purchaser's solicitor, a purchaser may find himself in the position of having at his own expense to obtain an abstract of and verify his vendor's title. Under the new Act, it is as important to warn a person against signing a contract agreeing to purchase, as it was, under the recently existing law, to warn a person against signing a contract agreeing to sell.

Sec. 4.
Sub-secs. 1, 2, 3, p. 114.
The personal representatives of vendor dying before completion to convey.

In the case of a person dying after the 31st December, 1881, and before completion of a contract for sale of freehold property, his personal representatives have power to convey to the purchaser; and a conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition, or as heir or next-of-kin of a testator or an intestate.

NOTE.—The obvious intention of this section is to substitute the personal representatives, who are easy to discover, for the heir or devisee, who may be difficult to discover, or may be under disability, and who has no interest in completing the sale of the property which has been converted into personalty. As, however, the section does not take away the right of the heir or devisee to convey, it will be advisable to ascertain that no such conveyance has been already made; indeed, it may still be advisable that the heir should join in the conveyance.

Discharge of Incumbrances on Sale.

Sec. 5.
Sub-secs. 1 to 4, p. 115.
Mortgaged lands may be sold without notice to incumbrancer.

Lands charged or mortgaged may be sold with or without notice to the incumbrancer, and without his concurrence, on payment into Court of such sum as the Court may consider sufficient, when invested in Government securities, to pay principal, interest, and costs. This applies to sales not completed by, or made after, the 31st December, 1881.

NOTE.—This provision is evidently intended to enable mortgaged lands to be sold free of the expense of the concurrence of the

mortgagee. No doubt in practice the Court will invariably require notice to be given to the mortgagee to attend when the amount to be paid into Court is settled. Applications to the Court under this section must be made by summons at chambers (sec. 69), where directions as to the sale should be given. (*Patching v. Ball* (1882), 30 W. R. 244.) The amount of incumbrance should be secured, and an application should then be made in chambers that the land is freed (*Dicken v. Dicken* (1882), 30 W. R. 887).

Sec. 5. p. 115.

General Words.

A conveyance of land made after the 31st December, 1881, includes everything upon and appurtenant to it; and a conveyance of a house includes all outhouses and ways, with other appurtenances.

Sec. 6. Sub-secs. 1 to 6, p. 116. General words covered by conveyance of land, &c.

Manor includes amongst other things minerals, and all rights and services attached to the tenure, subject to any restrictive provisions in the deed. But the grantor cannot give a better title than he has.

NOTE.—This section is one of several tending to diminish unnecessary verbiage in deeds. All the words usually found in a conveyance or mortgage following the specific description of the property dealt with and known as general words are enumerated, and in effect the section provides that such words are to be deemed as included in a conveyance or other deed unless excluded in express terms. Although the words "mines and minerals" are not mentioned in sub.-sec. 1, there is hardly room to doubt that mines and minerals pass under a conveyance of the land without being expressly mentioned, except in copyhold or customary assurances, and except in conveyances to railway companies. (Wolstenholme and Turner, Conveyancing Acts, *in loco*). Nevertheless, there may be cases in which it will be safer to specify them. (*Denison v. Holliday*, 1 H. & N. 631; S. C. 3 H. & N. 670.)

Covenants for Title.

In deeds made after the 31st December, 1881, certain covenants shall be deemed to be included therein, and shall be implied against the person who conveys and is expressed to convey as *beneficial owner*.

Sec. 7. Sub-sec. 1, p. 117. Covenants for title to be implied against person conveying as beneficial owner.

(A.) In the case of a conveyance for valuable consideration other than a mortgage or conveyance in consideration of marriage, a person who conveys as a beneficial owner shall be deemed to covenant—(1) That he has a right to convey;

Sec. 7. p. 117. Covenants implied in a conveyance.

(2) For quiet enjoyment; (3) For freedom from incumbrances; (4) For further assurance:

In a conveyance of leaseholds.

(B.) In a conveyance of leaseholds for valuable consideration other than a mortgage or conveyance in consideration of marriage, in addition to the foregoing covenants, one as to the validity of the lease shall be implied:

In a mortgage.

(C.) In a mortgage by a person who conveys, and is expressed to convey, as beneficial owner, he will be considered as covenanting—(1) For right to convey; (2) For quiet enjoyment: (3) For freedom from incumbrance; (4) For further assurance:

In a mortgage of leaseholds.

(D.) Where the mortgage is of leaseholds, in addition—(5) For the validity of the lease; (6) That rent has been paid and covenants performed, and for future payment and performance:

In settlements.

(E.) In settlements by a settlor or by one who is expressed to convey as such, a covenant for further assurance limited to himself and persons claiming title under him will be implied.

In conveyance by trustee, &c.

(F.) In a conveyance, made by and expressed to be made by a trustee, mortgagee, or a personal representative of a deceased person, or a committee of a lunatic so found by inquisition, or a person conveying under an order of the Court, shall be deemed to be included a covenant (as far as his own acts are concerned) that he has done no act to incumber.

Sub-sec. 2, p. 124. Covenant implied against beneficiary.

The vendor's covenants shall be implied as against the person beneficially interested, at whose direction, whether expressed or not, another person conveys.

Sub-sec. 3, p. 124. Covenants implied where husband and wife convey.

Where husband and wife convey as beneficial owners, the vendor's covenants shall be implied as against each, and the wife shall be deemed to convey by direction of the husband.

No covenant shall be implied against a grantor if in the deed he is not expressed to convey in any one of the following characters: beneficial owner, settlor, trustee, mortgagee, executor or administrator, committee of a lunatic so found by inquisition, person conveying under an order of the Court or by direction of the beneficial owner.

Sec. 7. Sub-sec. 4, p. 125. Covenants not to be implied unless grantor convey as beneficial owner, &c.

Copyholders under a deed are to have the benefit of the grantor's covenants mentioned in this section, but not so lessees at a rent, or copyholders other than those under a deed.

Sub-sec. 5, p. 125. Covenants extend to certain copyholders, but not to lessees, &c.

The benefit of the implied covenants runs with the land, and they may be enforced by the person in whom the whole or part of the covenantee's estate and interest is from time to time vested, but effect is to be given to any deed varying or extending the implied covenants.

Sub-secs 6 to 8, p. 125. Implied covenants run with the land.

NOTE.—This is another section intended to reduce the length of deeds, and if used will materially alter the forms at present in use. The covenants enumerated will, however, only be implied if the person who conveys is expressed to convey as "beneficial owner," or in one of the characters mentioned in sub-sec. 4. By the Act the necessity to use certain technical terms is abolished; such as the word "heirs" in the creation of estates in fee simple (sec. 51); but by enacting that covenants will only be implied if such words as "beneficial owner" are used, terms equally technical are created. In the case of an ordinary contract for sale, in the absence of stipulations to the contrary, either party can require the conveyance to be under the Act, and no doubt conveyances so framed will soon become general. On sale of leaseholds, the vendor must take care that the ordinary covenant by the purchaser for payment of rent and performance of covenants and indemnity is inserted, as this is for some reason not made an implied covenant.

The commencement of the section enacts that the covenants for title shall be implied by the person who conveys, so far as regards "the subject-matter or part of subject-matter *expressed* to be conveyed by him." By sec. 6, the various things enumerated under the general words are to be deemed included in every conveyance. It is perhaps a question whether the word "expressed" would apply to the things thus included, so as to raise, as regards them, the implied covenant for title.

If the implied covenants have once been raised, they cannot be subsequently excluded by a proviso, as a proviso contrary to a covenant is void. (*Williams v. Hathaway*, 6 Ch. D. 544.)

Sec. 7.
Sub-sec. 3, p. 124.

In the present state of uncertainty as to the law relating to married women, the value of the implied covenant by a married woman is doubtful. By the Married Women's Property Act, 1882 (45 & 46 Vic. c. 75), a married woman having separate property can render herself liable on contracts to the extent thereof. It is settled that a married woman whose property is subject to restraint upon anticipation cannot enter into a binding contract (*Pike v. Fitzgibbon*, 17 Ch. D. 454), and the principle laid down in this case is, it is conceived, not affected by the new Act.

Execution of Purchase Deeds.

Sec. 8.
Sub-secs. 1 & 2, p. 126.
Purchaser not entitled to have deed executed in his presence.

In sales made after the 31st December, 1881, a purchaser cannot require the conveyance to be executed in his presence, or in that of his solicitor, but he is entitled at his own expense to have the deed attested by any person he may nominate.

NOTE.—It was formerly considered that a purchaser could insist upon the purchase deed being executed in his presence or in that of his solicitor; consequently, where the vendor resided at some distance from the place of completion, the enforcement of the right gave rise to considerable inconvenience and expense. The object of this section is to protect a vendor from such expense.

Production and safe custody of Title Deeds.

Sec. 9.
Sub-secs. 1 to 14, p. 126.
Acknowledgment of right of production to bind the documents mentioned.

After the 31st December, 1881, where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of the other to the production and delivery of copies, such acknowledgment binds the documents to which it relates in the possession or under the control of the person who retains them, and of any person having possession of or control thereof from time to time, but only so long as he has possession thereof, and the only excuse for non-performance is fire or other inevitable accident. The obligations imposed by this section are to be performed at the request in writing and expense of the person to whom the acknowledgment is given, or anyone claiming under him other than a lessee at a rent and are—(1) To produce the documents for the purpose of inspection or comparison with abstracts or copies. (2) To produce them on any

trial or other judicial inquiry in the United Kingdom for purposes connected with the title, and (3) To furnish copies or extracts of the documents. The acknowledgment confers no right to damages in case of destruction or injury to the documents from whatever cause arising. The Court may be resorted to by any person claiming the benefit of an acknowledgment, and has uncontrolled discretion as to the order to be made, and as to the costs.

Sec. 9. p. 126.

An undertaking for safe custody of documents imposes an obligation on the person for the time being having possession or control of the documents to keep the same safe, unless prevented by fire or other inevitable accident; and in case of loss or injury the Court can award damages and costs to the party entitled to the benefit of the undertaking.

Undertaking for safe custody imposes obligations.

Acknowledgments and undertakings satisfy a liability incurred after the 31st December, 1881, to give covenants for production and safe keeping, but are subject to any terms and conditions embodied therein. Any larger rights for production and safe keeping other than such rights as are given by the Act are reserved.

Acknowledgments and undertakings substituted for covenants for production and safe keeping.

NOTE.—In place of the covenant for production in deeds framed after the Act, the following words will no doubt be inserted: "And the said A. B. hereby acknowledges the right of C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof." In cases where a covenant for production would formerly have been given by a separate deed, an acknowledgment will now be substituted. As the benefit of the acknowledgment and undertaking runs with the land, these documents will form part of the title, and it will probably be found convenient in practice to engross them on parchment. A form of acknowledgment will be found at p. 317. It will be advisable to stamp an acknowledgment as an agreement, in which case, if under hand only, the stamp duty will be 6*d*. It may be as well to have the acknowledgment in duplicate, each of the parties interested holding a copy. It may be observed that, under this section, there is no obligation to allow copies to be made by the person holding an acknowledgment, as in the case of a mortgagor under sec. 16. A trustee or mortgagee may safely give an acknowledgment, as he only remains liable

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p. 126.

for the documents so long as he retains them, but will not of course give an undertaking, which would impose upon him a liability for their safe custody.

Leases.

Sec. 10.
Sub-secs. 1 & 2, p. 129.
Rent and benefit of lessee's covenants to run with reversion.

In the case of leases made after the 31st December, 1881, rent and the benefit of lessee's covenants and right of re-entry are to run with the immediate reversion, and the same may be recovered and taken advantage of by the person entitled for the time being to the whole, or (where the reversionary estate has been severed) to part of the income of the land leased.

Sec. 11.
Sub-secs. 1 & 2, p. 129.
Obligations of lessor's covenants to run with reversion.

In like manner lessor's covenants are to run with the immediate reversion notwithstanding any severance thereof, and may be enforced by any lessee entitled, or the reversioner, if the lessor had power to bind and had bound him.

Sec. 12.
Sub-secs. 1 & 2, p. 130.
Apportionment of conditions on severance, &c.

So also every condition and right of re-entry shall, notwithstanding severance of the reversionary estate or cesser of the term as to part of the land leased, be apportioned and remain attached to each part of the land as if such part only had been originally comprised in the lease.

NOTE.—The object of the last three sections is to set aside the old technical rules that sometimes deprived lessors and lessees on a devolution of interests of their rights under the lease, and to provide that the rights and obligations of a lease may be enforced so long as there are persons in the relative positions comprehended by the terms lessor and lessee, in respect to the whole of the property leased or part of it. At first sight it might seem as if sec. 12, in the case of a lease including more than one house, apportioned the rent and covenants in respect of each house. This, however, is not the effect of the section.

As to contracts for a lease made under a power not being part of the title to the lease, *see* Conveyancing Act, 1882, sec. 4 (p. 189).

Sec. 13.
Sub-secs. 1 to 3, p. 130.
On sub-demise title to leasehold reversion not to be required.

After the 31st December, 1881, on a demise by an underlessee, the title to the leasehold reversion is not to be required, subject to any condition in the contract (if any) between the parties.

NOTE.—*See* note to sec. 3, sub-sec. 1. Inquiry and objection do not appear to be barred by this section.

Forfeiture.

Sec. 14. Sub-secs. 1 to 9, p. 131.

Forfeiture not enforceable until notice served.

After the 31st December, 1881, in leases made either before or after that date, and whether or not made under the authority of an Act of Parliament, notwithstanding any stipulation to the contrary, a lessor shall not be entitled to enforce any provision of re-entry or forfeiture on breach of any covenant, except those afterwards mentioned, until he serves a notice on the lessee specifying the particular breach, and requiring the same to be remedied if capable thereof, and in any case requiring compensation in money for the breach, and the lessee fails, within a reasonable time to remedy the breach, if capable of remedy, and to make reasonable compensation in money to the lessor's satisfaction. Absolute discretion is given to the Court to grant or refuse relief in an action by lessors or lessee, and upon such terms as under all the circumstances it thinks fit.

Requisites of notice.

Absolute discretion vested in Court.

Provisions do not apply to covenant against assigning, bankruptcy, or execution.

The covenants to which these provisions do not apply are (1) To covenant against assigning or under-letting, or to a condition for forfeiture on bankruptcy of lessee, or the taking in execution of the lessee's interest; (2) In mining leases, to a covenant to allow lessors to inspect the books or to enter the mine.

In mining leases covenant to inspect books.

Law as to insurance repealed.

Non-payment of rent excepted from section.

The law as to relief against breach of the covenant to insure is repealed, but the law as to relief for non-payment of rent is excepted from the operation of the section.

NOTE.—This section is one of the most important of the Act, and deals with a somewhat difficult matter in a way which will probably be considered satisfactory. Before the Act the Court had statutory power to grant relief only in cases of neglect to insure and to pay rent, and that upon terms only. The Court had however in exercise of its equitable jurisdiction granted relief in cases of breach of covenant to repair, but only in very exceptional cases, and on the ground of surprise or accident. It will be specially noted that the provisions of this section are of universal application, and it will not be possible to contract out of its operation. The only exception in the case of an ordinary lease is the covenant against assigning or underletting. The reason for this exception is presumably that such a covenant is assumed to be broken wilfully. Notwithstanding this, there are stronger reasons why the exception should not have

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been made. Even where the covenant is qualified by the provision that the lessor's consent is not to be arbitrarily withheld, such words do not apparently limit to any extent the power of the lessor to refuse his consent. (*Treloar v. Bigge*, 43 L. J. Ex. 95, L. R. 9 Ex. 151; *Sear* v. *House Property Society*, 16 Ch. D. 387.)

A covenant by two joint lessees, partners, not to assign, is not broken by one of the partners leaving the premises in the possession of the other on dissolution. (*The Corporation of Bristol v. Westcott* (C.A.), L. R. 12 Ch. D. 461.)

It will be observed that, before a lessor can bring an action, he must give a notice requiring the breach to be remedied, and he may also require reasonable compensation to be made to him. If by the terms of the lease a notice has to be given (as in the ordinary case of a covenant to repair), it should be given under the Act as well as under the lease, so as to avoid the necessity of giving a second notice. If the time within which the breach is required to be remedied be fixed by the notice, care must be taken to make the time sufficient, as the Court may subsequently have to consider whether the time limited was reasonable. No definite time, to apply to all cases, can be fixed, as the circumstances of each case differ. In like manner care must be taken in fixing the amount asked by way of compensation. In the absence of any settled practice, the sums that may be considered reasonable will necessarily vary with circumstances. (For forms of Notices under this section, see *post*, pp. 318-320.)

If on receipt of a notice the lessee remedies the breach, it is difficult to see how the lessor can bring an action, no matter how frequently the covenants may have been broken, unless, indeed, the lessor is justified in increasing the sum claimed for compensation to such a sum as the lessee would not pay. In an action by the lessor to enforce forfeiture, the Court might consider the sum so claimed, although very high, not unreasonable, having regard to previous breaches, and it could and might refuse to grant the lessee any relief.

Actions for breach of covenant (other than those for non-payment of rent, excepted by sub-sec. 8), or relief against forfeiture, are to be brought in the Chancery Division. An application by a lessee for relief can only be made if an action, commenced by either party, is actually pending. Such an application must be made by summons at chambers, and it would seem that the whole matter of the action can and should be decided upon the summons, and any terms can be imposed, including the granting of an injunction, to restrain any breach in the future. (Sec. 14, sub-sec. 2; sec. 69, sub-secs. 1 and 3.)

In case of non-payment of rent, the law relating to relief against re-entry or forfeiture, which remains unaffected by the Act, is contained in "The Common Law Procedure Acts, 1852 & 1860." Sec. 212 and sec. 1 of those Acts respectively enact as follows:—

Sec. 212.— Sec. 14.

"If the tenant or his assignee do or shall, at any time p. 131.
"before the trial in such ejectment, pay or tender
"to the lessor or landlord, his executors, or adminis-
"trators, or his or their attorney in that cause, or pay
"into the Court where the same cause is depending, all
"the rent and arrears, together with the costs, then and
"in such case all further proceedings on the said eject-
"ment shall cease and be discontinued; and if such
"lessee, his executors, administrators, or assigns, shall,
"upon such proceedings as aforesaid, be relieved in
"equity, he and they shall have, hold, and enjoy the
"demised lands according to the lease thereof made
"without any new lease."

Sec. 1.—

"In the case of any ejectment for a forfeiture brought for
"non-payment of rent, the Court or a Judge shall have
"power upon rule or summons to give relief in a sum-
"mary manner, but subject to appeal as hereinafter
"mentioned up to and within the like time after execu-
"tion executed, and subject to the same terms and
"conditions in all respects as to payment of rent, costs,
"and otherwise as in the Court of Chancery; and if the
"lessee, his executors, administrators, and assigns, shall,
"upon such proceeding, be relieved, he and they shall
"hold the demised lands according to the lease thereof
"made without any new lease."

The practice in equity from the earliest times has been to grant relief against a judgment recovered in ejectment upon a clause of re-entry for non-payment of rent, if proceedings were taken within six months after the execution of the judgment in ejectment. By sec. 211 of the Common Law Procedure Act, 1852, such proceedings could not be continued unless within a time limited a sufficient sum was paid into Court to cover all arrears and costs.

Mortgages.

Sec. 15. Sub-secs. 1, 2, p. 133. Mortgagee upon request of mortgagor to transfer instead of re-conveying

In mortgages made either before or after the 31st December, 1881, and notwithstanding any stipulation to the contrary, a mortgagor entitled to redeem shall have power to require the mortgagee (who is not or has not been in possession) to assign the mortgage debt, and convey the mortgaged property to any third person as the mortgagor directs.

NOTE.—Sec. 12 of the Conveyancing Act, 1882 (*post*, p. 194), must be read here. This section applies only to legal mortgages, and not to equitable mortgages, charges and mortgages of copyhold

Sec. 15.
p. 133.

when the mortgagee has not been admitted, for such mortgages and charges are discharged without any reconveyance on payment of the mortgage debt with interest and costs.

Formerly a mortgagor had only a right to redeem or to call for a reconveyance of the mortgaged estate to himself, and he could not require a mortgagee to convey to a third person. It often happened that persons were not willing to take the mortgaged property from the mortgagor for fear of some mesne incumbrance created by him of which they might be held to have had constructive notice, but they were willing to lend on a transfer of the original mortgage. By this section the mortgagee is bound to assign, but it has been held that the terms "mortgagor entitled to redeem" used in the section does not give a mortgagor a right to require a transfer, except upon the terms on which a mortgagee would, before the Act, have been bound to reconvey, and that where there are successive mortgagees, the second and subsequent mortgagees come within the term mortgagor as defined by the Act, being persons "deriving title under the original mortgagor," and as mortgagors they are entitled to redeem, but the one first entitled is the one who has the prior incumbrance. (*Trevan v. Smith*, 1882, 30 W. R. 716, 51 L. J., Ch. App. 621.) This principle is embodied in sec. 12 of the Act of 1882.

Sec. 16.
Sub-secs. 1, 2, 3
p. 133.
Mortgagor to have the right to inspect title deeds.

Where the mortgage is made after the 31st December, 1881, a mortgagor, as long as his right to redeem subsists (notwithstanding any stipulation to the contrary), shall be entitled, at reasonable times and on payment of the mortgagee's costs, to inspect and make copies of the title deeds and documents.

NOTE.—The right to inspect and copy documents is restricted to the mortgagor, and does not oblige the mortgagee to give production to persons authorised by him, as in the case of an acknowledgment under sec. 9.

Sec. 17.
Sub-secs. 1, 2, 3,
p. 133.
Restriction on consolidation of mortgages.

In cases where mortgages, or one of them, is made after the 31st December, 1881, and a contrary intention is not expressed in the mortgage deeds, or one of them, a mortgagor shall be entitled to redeem any one mortgage without paying any money due under a separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

NOTE.—This section is aimed at the right of a mortgagee to consolidate his securities as existing before the Act. The alteration is important, and it will probably be considered the duty of

practitioners to protect mortgagees from its operation. The right to consolidate can be preserved by a provision to that effect in any one of the mortgages, and as mortgagees should be protected in every way, such a stipulation will no doubt invariably be inserted. For the form of such provisions, *see* Precedent of Mortgage, No. 24, p. 279.

Sec. 17. p. 133.

The rule as to the consolidation of securities is, that if one person mortgages lands to another for a sum of money, and subsequently mortgages other lands to the same person for another sum of money, the mortgagee may treat the two mortgages as if the whole of the land had been mortgaged to him for the whole of the money advanced, so that the mortgagee cannot redeem either mortgage without also redeeming the other. The rule has been extended to the case of mortgages of different lands to different persons becoming vested by assignment in the same mortgagee. Before the present Act the tendency of recent decisions has been to limit the application of the doctrine. Thus, in *Baker v. Gray*, L. R. 1 Ch. D. 491, where the second mortgagee had had notice of the puisne mortgages on the first estate, it was held that he could not consolidate as against the puisne mortgagees. So again where there had been no default in one of the mortgages (*Cummins v. Fletcher*, 14 Ch. D. 699). In the very recent case of *Jennings v. Jordan*, in the House of Lords, L. R. 6 App. Cas. 698, where the mortgagor of one property assigned the equity of redemption and afterwards mortgaged another property to the mortgagee of the first, it was held that the right of the purchaser of an equity of redemption cannot be affected by a mortgage created after the purchase, and that the assignee was entitled to redeem the first mortgage without redeeming the second. *Tassell v. Smith*, 2 De G. & J. 713, was thus finally overruled. However, if the party seeking to redeem had notice at the time of purchasing the equity of redemption that the mortgage contained a power to consolidate, it would be otherwise. (*Andrews v. City Permanent Benefit Building Society*, 44 L. T. N. S. 641.) For this reason it is a very dangerous thing to purchase an equity of redemption or to take a second mortgage (*Beevor v. Luck*, L. R. 4 Eq. 537.) The present section cannot be said to make such transactions safe, as there may be another mortgage by the same mortgagor, in which a "contrary intention" has been expressed.

Leases (by Mortgagor or Mortgagee in Possession) in cases of Mortgages made after 31st December, 1881.

Sec. 18. Sub-secs. 1 to 8, p. 134. Leasing powers of mortgagor and mortgagee in possession.

A mortgagor or mortgagee of lands, while in possession, shall be entitled to make the following leases:—(1) An agricultural or occupation lease for 21 years or less; (2) A building lease for 99 years or less. Such leases must be

Sec. 18. p. 134.

Conditions of leasing.

made to take effect in possession not less than 12 months after date, must reserve the best obtainable rent without any fine being taken, and must contain a covenant for payment of the rent, and a condition of re-entry in default, within a time not exceeding 30 days; and a counterpart of such lease must be executed by the lessee and delivered to the lessor. Building leases are to be granted in consideration of the erection or agreement to erect, within five years from date, buildings new or additional, or of the improvement or reparation of buildings; and in the case of such agreements, a peppercorn or less than the rent ultimately payable, may be reserved for the first five years or less. In the case of a lease by a mortgagor, he shall, within one month, deliver the counterpart to the mortgagee, or if more than one, to the first mortgagee, but the lessee shall not be concerned to see that this provision is complied with. And a contract to grant or accept a lease may be enforced by or against every person on whom the lease, if granted, would be binding.

Power subject to any agreement in writing.

This section applies only subject to any contrary intention expressed in the mortgage or otherwise in writing, and effect is to be given to any terms as to letting contained in the mortgage; and it does not extend the rights of the parties to grant leases for a longer term or on any other conditions than such as the mortgagor could have granted with the consent of his mortgagees if the Act had not passed; and in cases of mortgages made before the 31st December, 1881, all parties may, by agreement in writing, agree that this section is to apply. Further, the provisions of the section are to extend, as far as circumstances admit, to any letting, or to an agreement, whether in writing or not, for leasing or letting.

NOTE.—Before the Act a lease granted by a mortgagor without the concurrence of a mortgagee was voidable, and might be repudiated by the mortgagee. This section proposes, subject to certain safeguards, to allow the mortgagor to make a valid lease

binding upon his mortgagee. It is not likely that in practice this section will have much real value, as, doubtless, most mortgages will contain a covenant restricting the mortgagor from leasing without the mortgagee's consent, and giving the mortgagee, after default, uncontrolled liberty to grant leases upon any terms he pleases. The provisions of the section are of a dangerous character: a mortgagor might accept a fine secretly, or for some personal reasons consider a rent the best obtainable which the mortagee might deem inadequate. Again, the language employed with respect to a building lease leaves the meaning or intention somewhat obscure. Thus, it provides that such a lease may be granted in consideration of the lessee "having improved or repaired buildings." Improving or repairing buildings is an indefinite phrase, and may mean a great deal or very little. The provision in sub-sec. 17, extending the section as far as circumstances admit, to an agreement "whether in writing or not" for leasing or letting, must be read subject to secs. 1, 2, and 4 of the Statute of Frauds (29 Car. II. c. 3). It would appear that the obligation imposed by sub-sec. 11 upon the mortgagor to deliver a counterpart of the lease to the mortgagee is a moral rather than a legal obligation, as there is no penalty attached to its violation.

Sec. 18. p. 134.

Sale; Insurance; Receiver; Timber.

Sec. 19. p. 136.

Powers incident to estate or interest of mortgagee.

In mortgages made by deed after the 31st December, 1881, the mortgagee shall, if a contrary intention be not expressed, have the following powers—(1) Where the principal has become due, to sell by private contract or public auction, subject to such conditions as he thinks fit, with power to buy in, vary, or rescind any contract, and resell without being answerable for any loss; (2) At any time after date of mortgage to insure the mortgaged property and add premiums to principal, which shall be a charge on the property, and carry interest at same rate; (3) When principal has become due to appoint a receiver of the whole or any part of the property; and (4) Where the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted for ornament or shelter, or to contract for any such cutting and sale, to be completed within 12 months from the making of the contract. These powers, and anything contained in any subsequent section regulating the exercise thereof,

To sell by private contract or public auction.

To insure.

To appoint receiver.

To cut and sell timber.

Powers may be varied by deed.

Sec. 19. p. 136.

may be varied or extended by the mortgage deed, and as so varied or extended shall operate as if such variations or extensions were contained in the Act.

NOTE.—The effect of this and the following sections (20, 21 & 22) is to render it unnecessary to insert in a mortgage deed the usual power of sale and provisions regarding the exoneration of a purchaser by the payment of the purchase-money and the appropriation of that money by the mortgagee, as the power to sell and the usual provisions will be implied in every mortgage made by deed. These provisions will be implied without any such words being used as are necessary, under sec. 7, to import the implied covenants for title. Powers to sell were, it is true, contained in Lord Cranworth's Act, 1866, part ii., now repealed (see App. p. v); but they were so restricted, that in practice it was found advisable not to rely thereon, at any rate without variation; but the powers given by this Act are as large as those contained in most mortgage deeds. (Secs. 25 & 29, pp. 143 & 146, contain further provisions relating to mortgages, and see forms printed on pp. 279 to 296.) The power given by sec. 19 to a mortgagee to insure and appoint a receiver must be read in conjunction with secs. 23 & 24, pp. 140, 141.) The Act does not give mortgagees the right to repair and charge the property therewith, or with interest on the outlay, but sec. 24 allows a receiver appointed by the mortgagee to pay for repairs out of money received.

Sec. 20. Sub-secs. 1 & 3, p. 138.

Power of sale not to be exercised until

Default in payment off after three months' notice;

Interest two months in arrear;

Breach of provision in mortgage.

A mortgagee is not to exercise the power of sale conferred by the Act until—(1) notice requiring payment of mortgage money has been served on the mortgagor or one of the several mortgagors, and default has been made in payment of the principal or of part thereof for three months after such service; or (2) some interest is in arrear and unpaid for two months after becoming due; or (3) there has been a breach of some provision contained in the mortgage deed, or in the Act, binding on the mortgagor, other than the payment of principal or interest thereon.

NOTE.—As to the form of notice and mode of service, *see* sec. 67. As the mortgagee is now empowered to call in the mortgage money at three months' instead of six months' notice, it would seem only reasonable that the mortgagor should have a corresponding right to pay off at three months' notice.

In a mortgage of leaseholds framed under the Act, it is assumed that, as a covenant to pay the rent and perform the covenants is implied (sec. 7), a breach of a covenant in a lease would be deemed a

breach of a provision contained in the Act so as to entitle the mortgagee to exercise the power of sale.

Sec. 20. p. 138.

A mortgagee exercising the power of sale conferred by this Act may by deed convey the property for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all such estates, interests and rights as have priority to the mortgage. In the case of copyholds or customary lands, the right to admission will not pass by a deed under this section unless the deed is sufficient otherwise by law or by custom.

Sec. 21. Sub sec. 1 to 7, p. 138.

Mortgagee may convey freed from subsequent incumbrsnaec.

Where a conveyance is made in professed exercise of the power of sale, the title of the purchaser will not be impeachable on the ground that no case has arisen to authorise the sale, or that due notice was not given, or that the power is otherwise improperly exercised; but the person damnified will have his remedy in damages against the person exercising the power.

Conveyance under power of sale not impeachable on ground that power improperly exercised.

Person damnified can recover damages.

The proceeds of the sale, after payment of prior incumbrances (if any), or payment into Court under the Act to meet such incumbrances, is to be held by the mortgagee in trust, first to pay the costs of the sale or attempted sale; secondly, to discharge the mortgage money, interest and costs, and other moneys (if any) due under the mortgage, the residue to be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof. The person for the time being entitled to receive and give a discharge for the mortgage moneys can exercise the power of sale. Such power is not to affect the right of foreclosure, nor can the mortgagee or his personal representatives be made responsible for any involuntary losses. At any time after the power has become exerciseable, the person entitled to exercise the same may demand and recover from any person other than a prior incumbrancer all the deeds and

Trusts on which purchase-money to be held (1) Costs of sale (2) Mortgage money, interest and costs.

Residue to mortgagor.

Mortgagee not responsible for involuntary losses.

Person entitled to sell may recover title deeds.

Sec. 21. p. 138.

documents relating to the property or the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

NOTE.—In the clause referring to the appropriation of money realised by a sale, the Act provides that, after payment of the principal, interest, and costs, and other money due on the mortgage, the residue "shall be paid to the person entitled to the mortgaged property," or authorised to give receipts for the proceeds of the sale thereof. As the purchaser is presumably the person then entitled to the mortgaged property, the Act can hardly have intended that the residue shall be paid to him at the time of sale; the words must mean "the person entitled subject to the mortgage," viz., the mortgagor. The clause giving the right to demand and recover from any person the documents of title, which a purchaser under the power of sale would be entitled to demand and receive from him, is somewhat vague. The conditions of sale would, it is presumed, regulate the right such a purchaser might have to those documents, and if the sale is made without conditions, then the provisions of sec. 3 of the Act referred to on p. 24 would apply.

Sec. 22. Sub-secs. 1 & 2 p. 139.

Mortgagee's receipt sufficient discharge.

Application of money received on sale of securities.

The receipt in writing of a mortgagee is a sufficient discharge for any money or securities arising under the power of sale comprised in a mortgage, and a person paying or transferring the same to a mortgagee need not inquire whether any money remains due under the mortgage. Money received by a mortgagee under his mortgage, from the proceeds of securities comprised in his mortgage, are to be applied as in the case of a sale under the power, with the variation that the expenses payable are to include the expenses properly incurred of recovering and receiving the money or securities, and of conversion of the latter into money.

Sec. 23. Sub-secs. 1 to 4, p. 140.

Restriction on mortgagee's right to insure.

Mortgagee not entitled to insure in certain cases.

The right given by sec. 19 to a mortgagee to insure is subject to the following provisions, viz., that the insurance does not exceed the amount specified in the mortgage deed, or if not stated then, not more than two-thirds of the amount required, in case of complete destruction, to restore the premises. A mortgagee is not entitled to insure in the following cases:—(1) Where the mortgage deed contains a declaration that no insurance is required;

(2) Where by the mortgage deed an insurance has to be, and is kept up by or on behalf of the mortgagor, in accordance with the mortgage deed; (3) Where the mortgage deed is silent as to insurance, but the mortgagor keeps up an insurance to the amount in which the mortgagee is authorised to insure.

Sec. 23. p. 140.

All money received on an insurance shall, if required by the mortgagee, be applied in reinstating the property damaged, or without prejudice to any obligation to the contrary imposed by law or by special contract, the mortgagee may require such moneys to be applied in or towards discharge of the mortgage money.

Application of insurance money.

A mortgagee entitled to appoint a receiver under the power conferred by the Act shall not make such appointment until he is entitled to exercise the power of sale, but then he may by writing appoint such person as he thinks fit to be receiver, who is to be deemed the mortgagor's agent, and unless otherwise provided in the deed, the mortgagor shall be solely responsible for the receiver's acts or defaults.

Sec. 24. Sub-secs. 1 to 8 p. 141.

Receiver not to be appointed till power of sale arises.

Mortgagor responsible for receiver's acts.

The receiver is to have the right to demand and recover in the mortgagor or mortgagee's name, the whole income of the property, by action, distress, or otherwise, and to give effectual receipts; and the person paying is not to be concerned to inquire whether any case has happened to authorise the receiver to act.

Powers of receiver.

Receipt good discharge.

A receiver may be removed and a new receiver appointed from time to time by the mortgagee in writing, and the receiver is to be entitled to retain as a remuneration such commission, not exceeding five per cent. on the gross amount received, as is specified in his appointment; and if no rate is specified, then five per cent. or such higher rate as the Court on application thinks fit to allow.

Removal of receiver.

Remuneration.

If so directed in writing by the mortgagee, the receiver is to insure the mortgaged property.

Insurance.

Sec. 24. p. 141. Application of money by receiver.

All money received by the receiver is to be applied as follows:—(1) In discharge of all rents, taxes and outgoings; (2) In keeping down all annual sums and interest on all principal sums having priority to the mortgage; (3) In payment of his commission and the insurance premiums, if any, properly payable, and the costs of executing necessary or proper repairs directed in writing by the mortgagee; (4) In payment of interest accruing due in respect of the mortgage money. And the residue is to be paid to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

NOTE.—Sub-sec. 8 clearly contemplates the appointment of a receiver by a subsequent incumbrancer; but it does not appear to take away the right of a prior incumbrancer to appoint his own receiver. The last provision seems to entitle the receiver to pay interest before it is due, but does not allow the surplus to be applied in reduction of the mortgage debt.

Action respecting Mortgage.

Sec. 25. Sub-secs. 1 to 7, p. 143. Right of party entitled to redeem to a sale.

In an action for redemption or for sale, or for sale or redemption in the alternative, brought either before or after the 31st December, 1881, by any person entitled to redeem, he may have a judgment or order for sale instead of for redemption; and in an action, whether for foreclosure or for redemption or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person interested, and although the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of the mortgage money, may direct a sale of the mortgaged property on such terms as it thinks fit, including the deposit in Court of a reasonable sum to meet the expenses and to secure performance of the terms.

But in an action brought by a person interested in the right of redemption and seeking a sale, the plaintiff may, on the application of the defendant, be ordered to give security for costs, and the conduct of the sale may be given to the defendant, with such directions as to defendant's costs as the Court may think fit. The Court may also direct a sale without previously determining the priorities of incumbrancers.

Sec. 25. p. 143. Security for costs may be ordered.

15 & 16 Vic. c. 86, s. 48, is repealed. This section does not apply to Ireland.

Repeal. Application.

NOTE.—The present section is wider than the repealed section of 15 & 16 Vic. c. 86, inasmuch as the order for sale may now be made not merely in a foreclosure action, but in actions for redemption or sale as well, and the Court has now a wider discretion in directing a sale. Upon this section it has been held that the power of the Court to order a sale in a redemption action may be exercised at any stage of the action (*Woolley v. Coleman* (1882), 30 W. R. 769, 51 L. J. Ch. 854). It has also been held that there is jurisdiction under this section for the Court to direct a sale in an action for foreclosure without the plaintiff's consent, although the mortgaged property is only an equity of redemption, there being prior mortgagees not party to the action. The Court, however, would not direct a sale at the request of a defendant who would not give security, but there being evidence that a sale would leave a very small margin for subsequent incumbrancers, one time certain was fixed for all the defendants to redeem or be foreclosed. (*Cripps v. Wood* (1882), 51 L. J. Ch. 584). The cases on the repealed section, however, are still authorities upon this section: all the circumstances must be taken into account (*Hurst* v. *Hurst*, 16 Beav. 372; *Phillips* v. *Gutteridge*, 4 De G. & J. 531; *Heath* v. *Crealock*, L. R. 10 Ch. 32). The discretion of the Court appears to be subject to appeal (*Foster* v. *Harvey*, 4 De G. J. & S. 59). The amount fixed to cover the expense of sale, ordered at request of a mortgagor under the repealed section, was usually £200 (*Bellamy* v. *Cockle*, 18 Jur. 465; *Whitfield* v. *Roberts*, 5 Jur. N. S. 113). A sale may be ordered after a judgment for foreclosure and redemption (*Union Bank of London* v. *Ingram* (1882) 30 W. R. 375, 51 L. J. Ch. 508. An application to the Court must be by summons at Chambers (*see* sec. 69, sub-sec. 3).

Statutory Mortgage.

A mortgage of freeholds or leaseholds may be by a deed expressed to be made by way of statutory mortgage in the

Sec. 26. Sub-secs. 1 & 2, p. 144.

Sec. 26. p. 144. Statutory mortgage.

form given in the third schedule to the Act, with such variations and additions (if any) as circumstances may require, and the provisions of this section shall apply thereto. The Act declares there shall be included in such deed a covenant by the mortgagor to pay principal and interest on a stated day, and so long as the principal, or any part remains unpaid, pay interest half-yearly, the first at end of six calendar months from the day fixed for payment of the mortgage money, and also a proviso for reconveyance to the mortgagor, or as he shall direct, on payment of principal and interest.

Covenant to pay principal and interest and proviso for reconveyance implied.

NOTE.—For the form of statutory mortgage, *see* the third schedule, p. 176. This form may be varied in the case of leaseholds; but the precedent of a mortgage given in the fourth schedule (p. 179), seems to lend itself more readily to variation, and for this reason it will probably be found in practice that the latter form will be more frequently used, although the statutory mortgage can be usefully used where the advance is small and the security ample.

Sec. 27. Sub-secs. 1 to 4, p. 144. Transfer of statutory mortgage.

A statutory mortgage may be transferred by a deed expressed to be made by way of statutory transfer of mortgage, and one of the three forms, "A," "B," "C," given in the third schedule to the Act, may be used with such variations and additions as circumstances may require.

Rights vested in transferee.

But whichever form is used, it is to have the effect of vesting in the transferee (and this term includes executors, administrators and assigns) all the rights of the original mortgagee and all his estate and interest in the mortgaged property.

Form "B" What implied.

If the form "B" is adopted, it will include an implied covenant to pay the mortgage money and interest on the dates stated in the mortgage.

Form "C." Operation.

If the form "C" is used, it will operate not only as a statutory transfer, but also as a statutory mortgage, but will not be liable to stamp duty as a mortgage.

NOTE.—The forms referred to in this section will be found on pp. 176, 177.

Sec. 28. p. 146.

In a statutory deed where more than one person mortgages or covenants, the implied covenant is to be deemed

joint and several, and if there are more mortgagees or transferees than one, the implied covenant is to be deemed a covenant with them jointly, unless the money is expressed to be secured to them in shares or distinct sums, in which case the covenant is to be considered as several in respect of the shares or sums secured to each.

Sec. 28. p. 146. Implied covenants to be joint and several.

A re-conveyance of a statutory mortgage may be in the form given in the third schedule, with such variations and additions as circumstances may require.

Sec. 29. p. 146. Statutory re-conveyance.

NOTE.—This is given on p. 178.

Trust and Mortgage Estates on Death.

Where a person dies after the 31st December, 1881, all trust and mortgage estates of inheritance vested in him solely shall, notwithstanding any testamentary disposition, vest in his personal representatives in like manner as chattels real,and may be dealt with by them as such; and for the purposes of this section, such personal representatives are to be deemed in law the heirs and assigns of the deceased within the meaning of all trusts and powers.

Sec. 30. Sub-secs. 1 to 3, p. 147. Trust and mortgage estates to vest on death in personal representative.

Sec. 4 of the Vendor and Purchaser Act, 1874, and sec. 48 of the Land Transfer Act, 1875, are repealed as from the 31st December, 1881.

Repeal.

NOTE.—It is noticeable that these sections are repealed, not by reference, as in other cases, to the second schedule to the Act, but by the section itself. The Vendor and Purchaser Act is printed in Appendix, p. x. The repealed section of the Land Transfer Act, 1875 (38 & 39 Vic. c. 87, s. 48), reads as follows:—

> "Section 5 of the Vendor and Purchaser Act, 1874, shall "be repealed on and after the commencement of this Act, "except as to anything duly done thereunder before the "commencement of this Act, and instead thereof be it enacted "that upon the death of a bare trustee intestate as to any "corporeal or incorporeal hereditament of which such trustee "was seised in fee simple, such hereditament shall vest like a "chattel real in the legal personal representative from time "to time of such trustee; but the enactment by this section "substituted for the aforesaid section of the Vendor and "Purchaser Act, 1874, shall not apply to lands registered "under this Act."

Sec. 30. p. 147.

The aptness of the analogy to chattels real is not very apparent, as chattels real, though they vest in the executor, only vest in him until assent, when they vest in the legatee. This can hardly be intended in the case of trust and mortgage estates.

Trustees and Executors.

Sec. 31. Sub-secs. 1 to p. 147.

Power to appoint new trustee in certain cases.

In trusts created either before or after 31st December, 1881, where there is no contrary intention expressed in the instrument creating the trust, and subject to the terms of such instrument, and to any provisions therein contained, where a trustee, whether appointed by the Court or otherwise, has died, or remains out of the United Kingdom for more than twelve months, or desires to be discharged, or refuses, or is unfit or incapable to act, the person nominated by the trust deed, or if no such person is able and willing to act, then the surviving trustee or trustees, or the personal representative of the last trustee, may by writing appoint another person trustee in place of the trustee dead, or to be removed for the reasons aforesaid, and on such appointment the number of trustees may be increased.

As to the numbers to be appointed.

It is not necessary to appoint more than one new trustee where only one was originally appointed, or to fill up the original number in cases where there were more than two; but except in cases where only one trustee was originally appointed, a trustee shall not be discharged unless there will be at least two trustees to perform the trust.

Power of new trustee.

On an appointment of a new trustee, any assurance or thing for vesting the trust property jointly in the trustees shall be done, but a new trustee so appointed, as well before as after the trust property becomes vested in him, shall have the same powers, and may in all respects act as if he had been an original trustee.

Extent of power to appoint.

The provisions of this section apply to a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing

or retiring trustee if willing to act in execution of such provisions.

Sec. 31. p. 147.

NOTE.—*See* Conveyancing Act, 1882, sec. 5 (*post*, p. 189), as to the power to appoint separate sets of trustees. The costs of a petition under the Trustee Act, 1850, sec. 32, will not in future be allowed in cases where the statutory power given by this Act can be exercised (*re* Gibbons Trust (1882), 30 W. R. 387).

Sec. 32. Sub-secs. 1 to 4, p. 149. Retirement of trustee.

In like manner where there are more than two trustees, if one by deed declares a desire to be discharged, and his co-trustees and any other person empowered to appoint trustees by deed, consent to such discharge and to the vesting of the trust property in the co-trustees alone, such trustee shall be deemed to have retired and to have been discharged.

Sec. 33. p. 149. Powers of new trustees appointed by the Court.

Also every trustee appointed by the Court, either before or after the commencement of the Act, shall, as well before as after the trust property becomes vested in him, have the same powers and may in all respects act as if he had been an original trustee.

Sec. 34. Sub-secs. 1 to 5, p. 150. Vesting of trust property in new or continuing trustee.

Where a deed executed after the 31st December, 1881, appointing a new trustee, contains a declaration that the trust property shall vest in such trustee, that shall be sufficient to vest the property in the trustees as joint tenants, and in the case of a like declaration in a deed discharging a trustee, will vest the trust property in the continuing trustees alone as joint tenants. These provisions do not apply to copyholds, customary lands, cr mortgage of lands for securing money subject to the trust, or to any such shares, stocks, annuities or property, only transferable in books kept by a Company or body, or in manner prescribed by Act of Parliament. For the purpose of registration of the deed, the persons making the declaration shall be deemed the conveying parties.

Sec. 35. Sub-secs. 1 to 3, p. 151. Power for trustees for sale to sell by motion.

Where a trust for sale is created in an instrument coming into operation after the 31st December, 1881, and subject to no contrary intention being expressed, or to any provision

Sec. 35. p. 151.

contained therein, the trustees may sell or concur in selling the trust property by public auction or private contract subject to such conditions as they think fit, with power to vary or rescind any contract, and to re-sell without being answerable for any loss.

Sec. 36. p. 151. Trustees' receipts to be good discharges.

In trusts created either before or after the 31st Dec., 1881, the receipt in writing of any trustee for any money or property payable or deliverable to him under any trust shall be a sufficient discharge for the same, and shall exonerate the person paying or transferring from any liability with respect thereto.

Sec. 37. Sub-secs. 1 to 3, p. 151. Power for trustees and executors to compound, &c.

In the case of executorships or trusts created before or after the 31st December, 1881, an executor may pay or allow any debt or claim on any evidence he thinks sufficient, and an executor or trustee may accept a composition or any security for any debt or property claimed, or allow time for payment, and may compromise or settle any debt or claim, and may enter into any agreement, and do such other things as may be expedient, without being responsible for any loss.

NOTE.—The effect of this section will be that a trustee will not, as before, have to justify any transaction which may be questioned by the *cestui que trust*, unless the latter makes out a *primâ facie* case of improper dealing. The section does not extend to an administrator, who might be merely a creditor, or some person in whom it would be improper to repose such considerable powers.

Sec. 38. p. 152. Powers of trustees may be expressed by survivor.

In cases of executorship (but not of administrations) or trusts constituted after, or created by instruments coming into operation after the 31st December, 1881, when a power or trust is vested in two or more executors or trustees jointly, unless the contrary is expressed, the same may be exercised by the survivor or survivors of such executor or trustee for the time being.

NOTE.—The provisions of secs. 31 to 37 were in great part contained in Part III. of Lord Cranworth's Act, which is repealed by sec. 71 of this Act. For Lord Cranworth's Act, *see* Appendix, p. i.

VIII.—Married Women.

Sec. 39. Sub-secs. 1 & 2, p. 152. Power for Court to bind interest of married woman.

After the 31st December, 1881, the Court may, by judgment or order, if it appears to be for her benefit, and with her consent, bind the interest of a married woman in any property, notwithstanding she is restrained from anticipation.

NOTE.—Strong grounds must be shown before the Court will exercise the power given by this section. (*Tamplin v. Miller* (1882), 30 W. R. 422.) In a case where a fund in Court was settled on a married lady for life, with restraint on anticipation, and in default of children as she should by will appoint, and in default of appointment for herself, Fry, J., on proof that she had no children, and was past child-bearing, ordered payment of a portion of the fund to her in order to pay debts she had incurred; he dispensed with a separate examination, but doubted whether the consent required by the section should not be given on such examination. (*Hodges v. Hodges* (1882), 51 L. J. Ch. 549, 30 W. R. 483.) Applications under this section must be by summons at chambers, under sec. 69 and sub-sec. 3, and not by petition. (*In re Lillwall's Trusts* (1882), 30 W. R. 243.) The summons need not be entitled in the matter of the Act (*re Landfield's Settled Estate* (1882), 30 W. R. 377.)

Sec. 40. Sub-secs. 1 & 2, p. 153. Power for married woman to appoint attorney.

A married woman, whether an infant or not, may, by deed executed after the 31st December, 1881, appoint an attorney on her behalf for the purpose of executing any deed, or doing any other act that she might herself execute or do; and the provisions of this Act relating to powers of attorney shall apply thereto.

NOTE.—For the provisions relating to powers of attorney, see secs. 46 to 48, pp. 159–161. The language of the section is very sweeping, but it may be assumed that it is not intended to affect deeds which must be acknowledged by a married woman under the Fines and Recoveries Acts (3 & 4 Will. 4 c. 74) and Malins' Act (20 & 21 Vic. c. 57). By the Bill as drafted, acknowledgments by married women were to have been abolished, but those sections were dropped, and sufficient care does not appear to have been taken to limit the operation of this section. *See* Conveyancing Act, 1882, sec. 7 (*post*, p. 190), with reference to the simplification of acknowledgments.

IX.—Infants.

Sec. 41. p. 153.

Where a person who in his own right is entitled to land for an estate in fee simple, or for a leasehold interest at

Sec. 41. p. 153. Land of infant to be deemed a settled estate.

a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

NOTE.—This section enables the executors, when it is for the benefit of the infant, to sell his fee simple estate, even where it has come to him by descent or devise, or by fee, and also to authorise leases. It also enables the guardians of the infant to execute all the special powers conferred by the Settled Estates Act, 1877. (Sec. 49 of that Act.) The Act is printed in the Appendix, p. xiii.

Sec. 42. Sub-secs. 1 to 8, p. 153. Power of trustee to enter into possession of infant's land.

In the case of an infant beneficially entitled to the possession of any land, and who, if a woman, is unmarried, the trustees, if any, appointed for the purpose, or in default the persons who are trustees with power of sale, or with power to consent to a sale, or if none, then any person appointed trustee for the purpose by the Court, on the application of a guardian or next friend of an infant, may enter into and continue in possession of the land.

Power of trustee to manage.

The trustees shall manage the land, with power to fell timber for sale or repairs, to erect or pull down buildings, to continue the working of mines, and to drain or improve the land, and to insure and to arrange with tenants and determine tenancies, and generally to deal with the land in a proper and due course of management, but where the infant is impeachable for waste, the trustees shall not commit waste, and they will have only the same right to cut timber as the infant would have if of full age.

Income to be applied for certain expenses;

Out of the income the trustees may pay the expenses incurred in management, or in the exercise of any power conferred by this section or otherwise, and keep down any annual sum or interest of any principal sum charged on the land.

And for maintenance.

They may also apply any income which in their discretion they deem proper for the infant's maintenance or benefit, or pay the same for that purpose to the infant's parent or guardian.

Residue to be invested.

The residue of the income is to be laid out in such investments as are authorised by the settlement, if any, or

by law, and accumulate the income so made in the way of compound interest by investing from time to time such income, and shall apply the accumulated fund as follows:—

Sec. 42. p. 153.

Application of accumulations:—

(1.) For the infant on attaining 21;

(1) On attaining 21;

(2.) If the infant being a woman, marries, then in trust for her separate use independently of her husband, and so that her receipt after marriage, and though still an infant, shall be a good discharge;

(2) Married woman and infant for her separate use;

(3.) If the infant dies, and being a woman unmarried, then where the infant was under a settlement tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, of the settlement, but where no trusts are declared, or the infant has taken the land by descent and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives as part of the infant's personal estate;

(3) In other cases.

but the accumulations may at any time be applied as if the same were income arising in the then current year.

Accumulations may be applied as income.

Where the infant's estate is an undivided share of lands the powers hereby given may be exercised jointly with the persons acting in regard to the other undivided share.

Joint estate.

This section only applies where the instrument comes into operation after the 31st December, 1881, and if a contrary intention is not expressed, and subject to any terms contained in the deed.

Operation of section.

NOTE.—The section in the first part enacts, "If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant * * * the trustees may enter into and continue in possession of the land." It is not clear that this section deprives any person from being "beneficially entitled to the possession of any land," and it is not easy to suggest what is the effect on the whole section of the words quoted.

In the case of the payment by the trustees of the accumulated

Sec. 42, p. 153.

fund to an infant being a married woman, although it is not so stated, the trustees must no doubt have regard to the provisions of a settlement (if any) executed on the marriage of the infant. It appears open to doubt whether the trustees would be obliged to pay the money to a woman, being an infant, who has been married, but whose husband is dead.

Sec. 43. Sub-secs. 1 to 4, p. 156.

Application by trustees of income of property of infant for maintenance.

In cases—whether the instrument came into operation before or after the 31st December, 1881, but subject to any contrary intention which may be expressed in such instrument, and to the terms and provisions contained therein—where property is held in trust for an infant for life, or for a greater interest, and whether absolutely or contingently on his attaining 21, or the occurrence of any event before his attaining that age, the trustees may, in their sole discretion, pay to the parent or guardian, or otherwise, for the infant's maintenance and benefit, the income or part thereof of the property whether there is any other fund for the same purpose, or any person bound by law to provide for the infant.

Residue to be accumulated and invested.

The trustees are to accumulate all the residue of that income in the way of compound interest by investing the same from time to time in securities authorised by the settlement (if any) or by law, and are to hold those accumulations for the benefit of the person who ultimately becomes entitled to the property, but these accumulations may at any time be applied by the trustees as if the same were income arising in the then current year.

Accumulations may be treated as income.

Rent charges and other Annual Sums.

Sec. 44. Sub-secs. 1 to p. 157.

Remedies for recovery of annual sums charged on lands.

Where, by any instrument coming into operation after the 31st December, 1881, any annual sum, howsoever payable, is charged on land or the income thereof, but not being rent incident to the reversion, becomes in arrear, the person entitled thereto shall, subject to all prior interests, have the following remedies:—

Distress.

1. If the annual sum be in arrear for 21 days, he may enter and distrain on the land charged, and

dispose according to law of any distress found for payment of the arrears and costs and expenses.

Sec. 44. p. 119.

(2.) If the annual sum be in arrear for 40 days then he may, though no legal demand has been made, enter into and retain possession of the land (without impeachment of waste), until the annual sum and all arrears, costs, and expenses are paid. Or he may, either with or without taking possession, demise the land to a trustee upon trust to mortgage, sell, let, or out of the income, or by any other reasonable means, to raise sufficient to pay the arrears of the annual sum, and all costs and expenses, including the costs of the deed by which the land was demised to the trustee, and of carrying its trusts into effect, and the surplus (if any) is to be paid to the person entitled to the reversion expectant in the term demised to the trustee.

Enter into possession.

Power to demise.

Application of money raised.

This section applies only and so far as a contrary intention is not expressed by the instrument under which the annual sum became payable, and is subject to any terms thereof.

Limit to operation of section.

The owner or any person interested in land out of which there issues any quit-rent, rentcharge or other annual sum, payable at or created after the 31st December, 1881, may require the Copyhold Commissioners at any time to certify the amount in consideration whereof the rent may be redeemed, and after serving on the person absolutely entitled to such rent one month's notice, pay or tender to such person the certified amount, and upon proof of such payment or tender the Copyhold Commissioners must certify under their seal that the quit-rent charge or other annual sum, as the case may be, is redeemed, and the land thenceforth becomes absolutely discharged therefrom.

Sec. 45. Sub-secs. 1 to 7, p. 158.

Owner of quit-rents or other perpetual charges may redeem.

This section does not apply to tithe rentcharge or rent

Exception from section.

Sec. 45. p. 158.

reserved on a sale or lease, or to a rent made payable under a grant for building purposes, or any rent or sum not payable in perpetuity.

Extent.

It does not extend to Ireland.

XI.—*Powers of Attorney.*

Sec. 46. Sub-secs. 1 & 2, p. 159. Attorney may act in his own name if authorised.

The person appointed by deed as the attorney of another, either before or after the 31st December, 1881, may, if authorised, execute any assurance and instrument, and do anything in his own name and with his own seal and signature, and such execution or act is to have the same effect as if done in the name of the person giving the power.

Sec. 47. Sub-secs. 1, 2 & 3, p. 160. Payment by attorney under power without notice of death, &c., good.

Any person doing any act, or making any payment *bonâ fide* after the 31st December, 1881, in pursuance of a power of attorney, is not to be liable, though the person appointing the other as his attorney be dead, lunatic, of unsound mind, bankrupt, or had revoked the power before such act has been done or payment made; but the fact of any such events happening must be unknown to the person making such payment or doing such act. The rights of all parties interested as against the person receiving the money are not to be affected.

NOTE.—The two last sections must be read in connection with ss. 8 and 9 of the Conveyancing Act, 1882 (*post*, pp. 192, 193). By virtue of the last sections, it is no longer necessary to retain or deposit the purchase-money until the vendor is ascertained to have been living at the time of execution by his attorney, as the power given for such purpose will no doubt be made irrevocable for a fixed time.

Sec. 48. p. 160. Provision to enable powers of attorney to be filed.

An instrument creating a power of attorney executed either before or after the 31st December, 1881, together with an affidavit or other sufficient evidence of its due execution, may be deposited in the Central Office of the Supreme Court of Judicature. A file of such instruments is to be kept, searches may be made, and office copies obtained, and such copies are to be evidence of the con-

tents of the instrument and of their having being duly deposited.

Sec. 48. p. 160.

NOTE.—This is a very useful provision. At the present time the donee of the power retains the document under which he executes a deed, and the party in whose favour the deed is executed has nothing to show that the execution was authorised by the power. This section will obviate this, as under such circumstances an office copy of the power will be obtained as a matter of course. A form of the affidavit required is printed at p. 320.

XII.—*Construction and Effect of Deeds and other Instruments.*

The word "grant" is not necessary in conveyances made either before or after the 31st December, 1881.

Sec. 49. Sub-secs. 1 & 2, p. 161.

Use of word "grant" unnecessary.

NOTE.—The word "grant" has always been employed to convey freeholds since 8 & 9 Vic. c. 106, sec. 2, which provided that all corporeal hereditaments should lie in *grant* as well as livery. In future one of the words mentioned in sec. 7, sub-sec. 4, must be used in order to raise the implied covenants. (*See* note to sec. 7, p. 35.)

In conveyances made after the 31st December, 1881, freeholds or choses in action may be conveyed by a person to himself jointly with another in the same manner as by him to another; and a husband may convey to his wife, and *vice versa*, alone or jointly with another person.

Sec. 50. Sub-secs. 1 & 2, p. 161.

Person may convey to himself with another.

Husband to wife.

NOTE.—The provisions of this section with reference to a husband conveying to his wife and a wife to her husband are encroachments upon the old maxim that in law a husband and wife are one. It has indeed been suggested that this section only applies to a joint tenancy, as in the common case of appointing a new trustee (*see* Wolstenholme & Turner, C. A. *in loco*); but there seems to be nothing in the section itself to justify this interpretation. It is, however, still advisable for a husband to convey to trustees rather than to his wife direct, as in the latter case, if the property had to be dealt with, the deed would have to be acknowledged (*see*, however, note, p. 83).

In a deed executed after the 31st December, 1881, estates in fee simple may be created by the use of the words "in fee simple," without the word "heirs," and an estate tail may be created by the words "in tail," without using the words "heirs of the body." In like manner, in order to create estates in tail male or female, the words

Sec. 51. Sub-secs. 1 & 2, p. 161.

Words of limitation in fee or in tail no longer necessary.

Sec. 51.
p. 161.

"heirs male of the body," or "heirs female of the body," need not be used.

NOTE.—This section disposes of the old technical rules, which required that in the creation of these estates such words as "heirs" and "heirs of the body" should be used, but it substitutes other technical words in their place. Thus, to create an estate in fee simple, the words "in fee simple" must be used. (*See* note to sec. 7.)

Sec. 52.
Sub-secs. 1 & 2, p. 162.
Power may be released.

The donee of a power given by an instrument coming into operation after the 31st December, 1881, may release or contract not to exercise the same, and that whether or not any interest be attached thereto.

NOTE.—By sec. 6 of the Conveyancing Act, 1882 (*post*, p. 189), a right is given to disclaim a power. The words in this section are general, but it is suggested that it does not apply where the release of the power would constitute a breach of trust, as in *Weller* v. *Ker*, L. R. 1 Sc. Ap. 11. (*See* Wolstenholme & Turner, C. A., *in loco*.)

Sec. 53.
Sub-secs. 1 & 2, p. 162.
Construction of supplemental or annexed deed.

A deed executed either before or after the 31st December, 1881, which is expressed to be supplemental to or directed to be read as annexed to a previous deed, is to be read as if indorsed upon such previous deed, or as if it contained a full recital thereof.

NOTE.—The object of this section is to render unnecessary more than the mention of previous deeds in any subsequent instrument. It will however, it is believed, be found more convenient in practice to refer to other deeds by recital than by the mode here suggested.

Sec. 54.
Sub-secs. 1 & 2, p. 162.
Receipt in deed sufficient.

In deeds executed after 31st December, 1881, the receipt for the consideration contained in the body of the deed is to be sufficient discharge without any further receipt being indorsed.

NOTE.—Although in practice, in the case of mortgages or purchases, a receipt for the mortgage or purchase-money is almost invariably indorsed on the deed, yet there is no binding authority to the effect that such indorsement was essential to the deed. In fact, in *ex parte* Charing Cross Bank, 16 Ch. D. (C. A.) 35, it was held that an indorsed receipt was no part of the deed and could not be looked at.

Sec. 55.
Sub-secs. 1 & 2, p. 162.

The receipt for the consideration in the body of a deed executed after 31st December, 1881, or indorsed thereon,

shall, in favour of a subsequent purchaser not having notice, be sufficient evidence that the same was in fact paid or given.

Sec. 55. p. 162. Receipt in or on deed sufficient for subsequent purchaser.

Where the consideration is to be paid or given after the 31st December, 1881, and a solicitor produces a deed, executed and with a proper receipt (either in the body or indorsed), signed by the person entitled to the money, this shall be a sufficient and the only authority required for payment of the consideration to the solicitor.

Sec. 56. Sub-secs. 1 & 2, p. 162. Receipt in or on deed sufficient authority for payment to solicitor.

NOTE.—Prior to this enactment, where the vendor or mortgagor did not attend personally to receive the consideration, the purchaser or mortgagee was entitled to insist on a written authority to pay to the vendor's or mortgagor's solicitor, although a proper receipt, signed by the vendor or mortgagor, was indorsed on the deed.

Deeds in the forms given in Schedule IV. to the Act, or using like expressions, are, as regards form and expression, to be sufficient.

Sec. 57. p. 163. Sufficiency of forms in 4th schedule.

NOTE.—*See* forms on p. 179. These forms must not be confused with the statutory forms given in the Third Schedule (p. 176). The covenants mentioned in sec. 7 of the Act, and the powers to sell, to insure, to appoint a receiver, and to cut timber, mentioned in sec. 19 (p. 136), will, in the case of a mortgage, if framed in accordance with the Act, be implied in regard to both the forms of mortgage in the Third and Fourth Schedules respectively; but if the statutory form is not used, the usual covenant for repayment must be inserted, as well as such other covenants as may be deemed advisable. (*See* notes to secs. 17 & 18, pp. 42, 44.) The covenants and powers that are implied may, it is thought, be safely omitted, assuming, of course, that the requisites of the Act are observed. (*See* secs. 7 & 51, pp. 117, 161). *See* notes to secs. 17 & 18, pp. 42, 44, and Precedent of Mortgage, No. 24, p. 279, with respect to the provisions of the Act, which, it is suggested, should in the case of mortgages be negatived.

A covenant made after the 31st December, 1881, relating to freeholds or to lands descending to the heir as special occupant, is to extend to the heirs and assigns of the covenantee as if the heirs and assigns were mentioned; and a covenant relating to lands other than freeholds, or descending to the heir as special occupant, is to be deemed to extend to the executors, administrators and assigns of the covenantee as if they were named.

Sec. 58. Sub-secs. 1, 2 3, p. 163. Covenants to extend to heirs, executors, administrators and assigns as if named.

Sec. 58.
p. 163.

NOTE.—The wording of this section is not very clear, and the marginal note used, "Covenants to bind heirs, &c.," does not tend to mend matters. The marginal note is evidently misplaced, as it applies to the following section, and the note to sec. 59, "Covenants to extend to heirs, &c.," should no doubt be opposite this section. This and the following section are doubtless intended to have the effect of further shortening deeds, as the object in making the words "heirs," "executors," "administrators" and "assigns," implied in all instruments, is to render the insertion of those words unnecessary.

Sec. 59.
Sub-secs. 1 to 4, p. 163.
Covenants to bind heirs, executors and administrators as if named.

Covenants, contracts, bonds and obligations under seal, made or implied after the 31st December, 1881, although not expressed to bind the heir, shall (if a contrary intention be not expressed, and subject to any terms thereof) bind the real and personal estates, and the heirs, executors and administrators of the person entering into the covenant, contract, bond, or obligation.

Covenants implied by the Act fall within this section.

Sec. 60.
Sub-secs. 1 to 4, p. 164.
Survivor bound by covenant with two or more jointly.

In like manner where covenants, bonds, &c., are given by two or more persons jointly, they shall (unless the contrary be expressed and subject to any expressed provisions) be deemed and considered as if made with the survivors and survivor, and also with such persons as may become entitled to sue on such covenant, contract, bond or obligation, and the same effect is to be given to covenants implied by the Act.

Sec. 61.
Sub-secs. 1 to 3, p. 164.
Receipt of survivor sufficient where money advanced on joint account.

Where in mortgages, obligations or transfers thereof, made after the 31st December, 1881, the money is expressed to belong to two or more persons on a joint account, or where, though not so expressed, yet the mortgage, obligation or transfer thereof is made to two or more persons jointly, and is not stated to belong or be made to them in different shares or proportions, the receipt of the survivors or survivor, or the personal representative of the last survivor of them, shall be a sufficient discharge to the person discharging the obligation, and this though he has had notice that the joint account has been severed.

Limit of operation.

This section is not to apply if a contrary intention is

expressed by the instrument, and effect is to be given to the terms thereof.

Sec. 61. p. 164.

In conveyances made after the 31st December, 1881, of any easement, right, liberty or privilege in or over land, the grantee and those claiming under him shall enjoy such easement and privilege for an estate or mortgage not exceeding in duration the estate conveyed in the land.

Sec. 62. Sub-secs. 1 & 2, p. 165. Grant of easements, &c., by way of use.

All conveyances made after the 31st December, 1881 (if a contrary intention is not expressed and subject to any expressed terms), will pass "all the estate, right, title, interest, claim, and demand" of the conveying parties.

Sec. 63. Sub-secs. 1 to 3, p. 165. Conveyance to pass all the estate.

NOTE.—This section is part of the general plan adopted to shorten deeds by the omission of all words which from their nature can safely be implied.

In covenants, the construction of which are implied by the Act, the singular number will include the plural and the masculine gender the feminine.

Sec. 64. p. 166. Construction of implied covenants.

XIII.—*Long Terms.*

On or after the 31st December, 1881, where an unexpired residue of not less than 200 years of a term which, as originally created, was for not less than 300 years, is subsisting in land without any trust or right of redemption affecting the term in favour of the freeholder or reversioner, and without rent or with a peppercorn or nominal rent or having a rent originally, which, subsequently has been released or become barred by lapse of time, or otherwise ceased to be payable, then the term may be enlarged into a fee simple. Each of the following persons:—

Sec. 65. Sub-secs. 1 to 7, p. 166. Enlargement of residue of long term into fee simple.

(1.) Any person beneficially entitled in right of the term to possession, whether subject to any incumbrances or not, but in case of a married woman with the concurrence of her husband, but without if entitled for her separate use with or without power of anticipation;

(2.) Any person in receipt of income as trustee, or

Sec. 65.
p. 166.

having the term vested in him in trust for sale, whether subject to any incumbrances or not;

(3.) Any person in whom as personal representative the term is vested, whether subject to any incumbrances or not;

has power by deed to declare that from and after the execution of the deed, the term shall be enlarged into a fee simple, and thereupon, by virtue of the deed and of the Act, the term shall become and be enlarged accordingly, and the person shall have in the land a fee simple instead of the term.

The estate so acquired shall be subject to the same trusts, rights and equities, and to all the same provisions relating to user and enjoyment and to all the same obligations as the term would have been subject to if it had not been so enlarged.

But where any land so held for the residue of a term has been settled in trust by reference to freehold land, so as to go along with that other land, and at the time of enlargement the ultimate beneficial interest in the term, whether or not subject to subsisting particular estate has not become absolutely vested in any person, then the estate in fee simple acquired as aforesaid, is, without prejudice to any conveyance for value previously made by a person having a contingent interest in the term, liable to be, and is to be conveyed and settled as the other freehold land; and until so settled shall devolve beneficially as if it had been so settled.

The estate in fee simple so acquired is, whether the term was originally created without impeachment of waste or not, to include all mines and minerals not at the time severed, or that have not at the time been severed or reserved by an inclosure act or award.

NOTE.—This section has been amended by the Conveyancing Act, 1882, sec. 11 (*post*, p. 194). So long, however, as the distinction between real and personal property exists, such a provision as con-

tained in this section which, if acted upon, converts personalty into realty, will probably be found to give rise to difficulties which only litigation can solve. Thus, in view of sub-sec. 4, it appears open to doubt whether a fee simple created under this section will pass in a residuary bequest of personalty in a will made before the 31st December, 1881, or in a will made after that date.

Sec. 65. p. 166.

A form of deed under this section is printed on p. 316.

The deed, not being one expressly mentioned in the schedule to 33 & 34 Vic. c. 97, is liable under that Act to a 10s. stamp duty.

XIV.—*Adoption of Act.*

The powers given by the Act to any person, and the covenants and words to be deemed included or implied in any instrument, or made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants and words for the purposes stated, and a solicitor shall not be deemed guilty of neglect or incur any liability by reason of his omitting in good faith in any instrument or document to negative the giving or application of any of those powers, covenants, or words, or to insert or apply any others in place thereof where he is allowed to do so.

Sec. 66. Sub-secs. 1 to 4, p. 168. Solicitor adopting Act to be protected.

But it is not to be implied that the insertion in any such instrument or document of any further or other powers, covenants, or words is improper.

Where the solicitor is acting for trustees, executors or other persons in a fiduciary position, those persons are similarly protected, and they are also so protected when they are acting without a solicitor.

Trustees and others similarly protected.

XV.—*Miscellaneous.*

Any notice required or authorised by the Act to be served is to be in writing, and if to be served on a lessee or mortgagor it is sufficient although only addressed to the lessee or mortgagor by that designation without his name, or generally to the person interested without any name, and notwithstanding that any person to be affected by the notice is absent under disability unborn or unascertained.

Sec. 67. Sub-secs. 1 to 7, p. 169. Service of notices, what sufficient.

Sec. 7.
p. 169.

Any such notice is to be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor or other person, or if to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

Service by registered letter.

Any notice as aforesaid shall also be sufficiently served if it is sent by post in a registered letter to any of the persons before mentioned at the aforesaid place of abode or business, and if that letter is not returned through the post office undelivered, the service is to be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

Exceptions.

Notices served in proceedings in the Court are excepted from the section.

NOTE.—Although the section states that the notice is to be in writing, the word "writing" by the interpretation clause (sec. 2) includes print.

Sec. 68.
p. 170.
Short title of the Statutory Declarations Act, 1835.

The Statutory Declarations Act, 1835, is to be the short title of 5 & 6 Will. IV. c. 62; and it may be cited by that name in any declaration or other document, or in any Act of Parliament.

NOTE.—This provision will abolish the present long and cumbersome ending to statutory declarations. In future such declarations will conclude in these words: "And I make this solemn declaration, "conscientiously believing the same to be true, and by virtue of the "provisions of the Statutory Declarations Act, 1835."

XVI.—*Court Procedure Orders.*

Sec. 69.
Sub-secs. 1 to 10, p. 170.
Applications to be made in the Chancery Division in Chambers.

All matters brought by the Act within the jurisdiction of the Court are to be assigned to the Chancery Division; and unless otherwise expressed, every application to the Court is to be by summons at chambers.

Payment into Court.

Payment into Court is to effectually exonerate the payer therefrom.

On an application by a purchaser, notice is to be served in the first instance on the vendor, and *vice versâ;* and on any application notice is to be served on any person the Court thinks fit, and the Court has unlimited discretion to make any order as to the costs and expenses of all or any parties to an application.

Sec. 69. p. 170. Persons on whom notice is to be served. Discretion as to costs.

General Rules may be made and shall be deemed Rules of Court within sec. 17 of the Judicature Act, 1876.

General Rules.

The Court of Chancery of the County Palatine may exercise jurisdiction as regards land in the County Palatine of Lancaster, and rules are to be made from time to time by the Chancellor of the Duchy of Lancaster, and with the consent of the Vice-Chancellor of that duchy and a Chancery judge.

County Palatine.

General rules and rules of the Court of Chancery of the County Palatine may be made at any time after the 22nd August, 1881, to take effect after the 31st December, 1881.

Rules of County Palatine.

NOTE.—The County Courts have no jurisdiction with respect to the matters under the Act.

An order made by the Court under any statutory or other jurisdiction, either before or after the 31st December, 1881, except any order which before that date has been set aside, or as regards which an action for that purpose is then pending, is not, as against a purchaser, to be invalidated on the ground of want of jurisdiction, or for want of any concurrence, or for any other omission, whether or not the purchaser had notice thereof.

Sec. 70. Sub-secs. 1 to 3 p. 171. Orders of Court conclusive.

The section applies to any lease, sale, or other act under the authority of the Court in pursuance of the Settled Estates Act, 1877, notwithstanding sec. 40 of that Act or any former Act repealed by that Act.

NOTE.—The Settled Estates Act, 1877, is printed in the Appendix, p. xiii.

Under this section it has been held that a purchaser under the order of the Court, provided the Court be of competent jurisdiction, is protected against any impropriety in the order, even though there

Sec. 70. p. 171.

be an error apparent on the face of the order. (*Re Hall Dares Contract* (1882), 30 W. R. 556, 51 L. J. Ch. 671.)

XVII.—*Repeals.*

Sec. 71. Sub-secs. 1 & 2, p. 172.

Acts repealed.

The Act to facilitate the Conveyance of Real Property (8 & 9 Vic. c. 119), and parts 2 and 3 of the Act to give trustees and mortgagees and others certain powers now commonly inserted in settlements, mortgages and wills (23 & 24 Vic. c. 145), are repealed.

Restriction on repeals.

The repeal by the Act of any enactment is not to affect the validity or invalidity of any instrument executed or anything done before the 31st December, 1881, or any action then pending, which action may be carried on as if there had been no such repeal, but this provision is not to be construed as qualifying the provisions relating to sec. 40 of the Settled Estates Act, 1877, or any former Act repealed by that Act.

NOTE.—Parts 1 and 4 of Lord Cranworth's Act (23 & 24 Vic. c. 145) are repealed by the Settled Land Act, 1882 (45 & 46 Vic. c. 38), but as everything done under the repealed statute remains valid, Lord Cranworth's Act will be found printed in the Appendix, p. i. Where mortgages or other deeds have been framed under Lord Cranworth's Act, and in reliance upon it, certain provisions, such as the power of sale in a mortgage, etc., have been omitted, a doubt has been raised whether such powers would be implied, now that the Act is repealed, having regard to the wording of the saving clause of the present section, and as the present Act only applies to mortgages made after the 1st January, 1882. (*See* secs. 19–24.) It is thought, however, that the language of the section is sufficiently wide to meet such cases. The Act to facilitate the Conveyance of Real Property (8 & 9 Vic. c. 119), commonly known as Lord Brougham's Act, has, however, remained almost a dead letter, so that it has not been deemed necessary to print this Act. The provisions referred to relating to sec. 40 of the Settled Estates Act, 1877, are embodied in sec. 70 of the Act.

XVIII.—*Ireland.*

Sec. 72. Sub-secs. 1 to 5, p. 178.

Modification respecting Ireland.

The provisions of the Act in its application to Ireland are to be modified as follows :—

The Court is Her Majesty's High Court of Justice in Ireland.

All matters within the jurisdiction of that Court are (subject to the Acts regulating that Court) to be assigned to the

Chancery Division, but general rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division. Sec. 72. p. 172.

The proper office of the Supreme Court of Judicature in Ireland is substituted for the central office of the Supreme Court of Judicature.

General rules for purposes of this Act for Ireland shall be deemed rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made at any time after the 22nd August, 1881, to take effect after the 31st December, 1881.

NOTE.—Secs. 25 and 45 are the only sections which do not extend to Ireland.

This section extends to Ireland only, and by it sec. 5 of the Vendor and Purchaser Act, 1874, is repealed as from the 31st December, 1881, as regards cases of death thereafter happening, and sec. 7 of the same Act is repealed as from the date at which it came into operation. Sec. 73. Sub-secs. 1 and 2, p. 173. Repeals affecting Ireland.

NOTE.—Secs. 5 and 7 of the Vendor and Purchaser Act, 1874, are, as regards England, repealed by secs. 48 and 129 of the Land Transfer Act, 1875 (38 & 39 Vic. c. 87).

SCHEDULES.

THE FIRST SCHEDULE (*See* p. 174).

ACTS AFFECTED.

PART I.

This part sets out a list of nine Acts, all more or less referring to judgments affected by certain sections of the Bill which were struck out in the House of Commons. It was inadvertently allowed to remain here after the sections referring to them had been removed. The Acts enumerated in this part are now, however, referred to in the Conveyancing Act, 1882, sec. 2 (*post*, p. 186) relating to searches.

PART II.

NOTE.—This part sets out the long title of the Act, which is in future to be known as the Statutory Declarations Act, 1835 (*see* sec. 68, p. 170).

THE SECOND SCHEDULE (*See* p. 175).

REPEALS.

PART I.

NOTE.—The sections of the two Acts repealed by this part relate to relief against breach of the covenant to insure. This repeal is referred to in sec. 14.

PART II.

NOTE.—The section referred to in this part is repealed by sec. 25, p. 143.

PART III.

NOTE.—*See* sec. 71, p. 172, as to the repeal of the Acts set out in this part. Part II. of the second of the two Acts repealed dealt with the powers of mortgagees, but the powers conferred on mortgagees by the present Act are much greater than those conferred by the repealed Act. Part III. of the repealed Act, which related to trustees and executors, did not confer such extensive powers as the present Act, but no section is to be found in the present Act, which regulates the investment of trust funds, as was done by sec. 25 of the Act in question, and which is now repealed.

THE THIRD SCHEDULE (*See* p. 176).

STATUTORY MORTGAGE.

NOTE.—This schedule is referred to in secs. 26, 27, and 29 of the Act. No objection can be taken to the forms on the ground of undue length, and in cases where the advance is small and the security ample, the forms may be used with advantage.

THE FOURTH SCHEDULE (*See* p. 179).

SHORT FORMS OF DEEDS.

NOTE.—The forms set out in this schedule are of practical value, and can be adapted as circumstances require. (*See* Precedents, p. 265 to 316.)

CONVEYANCING ACT, 1882.

(45 & 46 Vic. c. 39.)

SUMMARY AND PRACTICAL NOTES.

The object of the Act is to further improve the Practice of Conveyancing.

Preliminary.

The Act may be cited as the Conveyancing Act 1882; and the Conveyancing and Law of Property Act 1881 and this Act, may be cited together as the Conveyancing Acts 1881 and 1882. It operates from the 31st December 1882, and does not extend to Scotland. The following terms are defined:—(1.) Property; (2.) Purchaser and purchase. The Fines and Recoveries Acts are referred to in this Act by their short title.

Sec. 1. Sub-secs. 1, 2 3, p. 185. Short titles. Commencement. Extent. Interpretation.

Note.—Notwithstanding the provisions of this section it will still be necessary in deeds and other instruments to refer to the Act of 1881 where referred to by itself as the Conveyancing and Law of Property Act 1881. It would certainly have been desirable to have abridged the title for all purposes. The present Act applies, like the former, with some modification, to Ireland. The terms "property" and "purchaser" are also defined in the Act of 1881; but in that Act, "property" includes "any estate or interest in any property, real or personal." These words are now omitted; but for what reason it is difficult to say.

Searches.

A person requiring search to be made in the central office of the Supreme Court of Judicature of any judg-

Sec. 2. Sub-sec. 1, p. 186.

THE SECOND SCHEDULE (*See* p. 175).

REPEALS.

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NOTE.—The sections of the two Acts repealed by this part relate to relief against breach of the covenant to insure. This repeal is referred to in sec. 14.

PART II.

NOTE.—The section referred to in this part is repealed by sec. 25, p. 143.

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Searches.

A person requiring search to be made in the central office of the Supreme Court of Judicature of any judg-

Sec. 2. Sub-sec. 1, p. 186.

Sec. 2.
p. 186.
Requisition for searches for judgments, &c., may be made.

ment or other matter whereof entries are or can be made in that office by any Act described in Part I. of the first schedule to the Conveyancing Act, 1881, may deliver a requisition on that behalf, whereupon the proper officer shall diligently make the search required, and shall make and file a certificate of the result, office copies of which can be obtained, and shall be evidence of the certificate.

Sub-sec. 2.
Searches to be made by officer, who shall file a certificate of result.

Sub-sec. 3.
In favour of a purchaser certificate to be conclusive.

In favour of a purchaser as against persons interested under or in respect of judgments or other matters whereof entries are or can be made as aforesaid, the certificate, according to the tenour thereof, shall be conclusive affirmatively or negatively, as the case may be.

Sub-sec. 4.
Requisitions, how to be made.

No person entitled to require a search unless for the purposes of the section.

Requisitions for certificates are to be in writing, and to give sufficient particulars, but a person making a requisition shall not be entitled to a search or office copy certificate until he has satisfied the officer that the same is required for the purposes of this section.

Sub-sec. 5.
General rules to be made.

General rules shall be made for the purposes of this section, prescribing forms and fees and regulating the practice of the office, which shall be deemed Rules of Court within sec. 17 of the Appellate Jurisdiction Act 1876 as altered by sec. 19 of the Supreme Court of Judicature Act 1881.

Sub-sec. 6.
Official committing fraud, &c., guilty of misdemeanour.

If any person employed in the office commits, or is privy to any act of fraud or collusion, or is wilfully negligent in the making or otherwise, in relation to any certificate or office copy under the section, he shall be guilty of a misdemeanour.

Sub-sec. 7.
Right to search independently of section not to be prejudiced.

Nothing in the section, or in any rule made thereunder, shall take away or prejudicially affect any right which any person may have independently of the section to make any search in the office; and every such search may be made as before the Act.

Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

Sec. 2. Sub-sec. 8, p. 188. Solicitor not responsible for errors in certificates.

Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

Sub-sec. 9. Nor trustees &c.

Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

Sub-sec. 10. Nor such persons acting without a solicitor.

Nothing in this section applies to deeds enrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory rule.

Sub-sec. 11. Deeds enrolled under any Act excluded.

The section does not extend to Ireland.

Sub-sec. 12. Ireland excluded.

NOTE.—The Acts referred to in sub-sec. 1 are enumerated on p. 174. These relate to the registration of judgments, writs of execution, crown debts and accountantships, lites pendentes and annuities. As the sub-section also applies to searches for entries of "other matters" required to be made by *any other Act*, other than those referred to, the section will, it is apprehended, cover searches for certificates of acknowledgment of deeds by married women under the Fines and Recoveries Act (3 & 4 Will. IV. c. 74), and bills of sale under the Bills of Sale Acts, 1878 and 1882 (41 & 42 Vic. c. 31; 45 & 46 Vic. c. 43).

It will be noticed that the section applies only to persons requiring a search to be made for "purposes of this section." These words, which occur in sub-secs. 1, 4 and 5, are ambiguous, but as the purposes of the section are to authorise official searches and to protect purchasers relying on the official certificates, it is assumed that a purchaser, who in pursuance of sub-sec. 4, satisfies the officer that he is completing a purchase, will be deemed to require the certificate "for the purposes of the section."

Sub-sec, 1.

The term purchaser is defined to include a lessee or mortgagee, or other person *who, for valuable consideration*, takes or deals for property (p. 186).

Sub-sec. 3.

A person injured by any negligence on the part of an official will, it is assumed, notwithstanding the provisions here provided relating to the punishment of officials for fraudulent conduct, still have a right of action to recover the loss sustained by such negligence (*Douglas* v. *Yallop*, 2 Burr, 722).

Sub-sec. 6.

Although the right to search independently is not taken away, it will no doubt become the practice for purchasers to rely upon the

Sub-sec. 7.

Sec. 2. p. 186.

official search. It has been held that registration under the Acts referred to in schedule 1 of the Conveyancing Act 1881, did not of itself amount to notice, and that a purchaser was not bound to search (*Lane* v. *Jackson*, 20 Beav. 535); but that if a search was made, a purchaser was fixed by notice of any incumbrance which might have been discovered (*Proctor* v. *Cooper*, 18 Jur. 444, 2 Drew, 1). If a purchaser now relies upon the official search, he will be protected from the liability imposed by the principle of the decision in the latter case.

Sub-sec. 11.

The deeds excepted by this sub-sec. are—

(1.) Bargains and sales under 27 Hen. VIII. c. 16.

(2.) Conveyances to Charities, 9 Geo. II. c. 36; 24 and 25 Vic. c. 9; 35 and 36 Vic. c. 24.

(3.) Fines and Recoveries Acts, 3 and 4 Will. IV. c. 74, and 4 and 5 Will. IV. c. 92 (Ireland).

Inclosure awards (6 and 7 Will. IV. c. 115; 3 and 4 Vic. c. 31).

Notice.

Sec. 3. Sub-sec. 1, p. 188.

(1.) A purchaser shall not be prejudicially affected by notice of any instrument fact or thing, unless—

Purchaser not to be affected by notice unless— (i.) within his own knowledge;

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) within the knowledge of his counsel, solicitor, or agent.

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, solicitor, or other agent, or would have come to the knowledge of his solicitor or other agent, if such inquiries and inspections had been made as ought reasonably to have been made by them.

Sub-sec. 2. Purchaser not exempt from liability to perform covenant.

The section is not to exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant or condition contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if the section had not been enacted.

A purchaser shall not by reason of anything in the section be affected by notice in any case where he would not have been so affected if the section had not been enacted.

Sec. 3. p. 188. Sub-sec. 3. Section not to extend liability of purchaser.

The section applies to purchases made either before or after the commencement of the Act; but where an action is pending at the commencement of the Act, the rights of the parties shall not be affected by the section.

Sub-sec. 4. Applies to all purchases save pending action.

NOTE.—This section limits the liability of a purchaser in regard to matters of which he may be deemed, before the Act, to have had constructive notice. The law as to actual notice remains as before. To affect a purchaser, the notice must proceed from some person having an interest in the property, and it must not be a general claim to the property simply. Notice should also be given in the same transaction (*Wildgoose* v. *Wayland*, Gouldsch 147, pl. 67; *Barnhart* v. *Greenshields*, 9 Moore's P. C. C. 36; *Saffron Walden Building Society* v. *Rayner*, 14 Ch. D. 406).

The doctrine of constructive notice has given rise to a very large number of cases, but the decisions of the Courts of late years have tended towards restricting the doctrine. In *Allen* v. *Seckham* (11 Ch. D. 795), Brett, L. J., stated the principles which influence the Court in imputing constructive notice to a purchaser in these words: "When a person purchases property where a visible state of things exists which could not legally exist without the property being subject to some burden, he is taken to have notice of the extent and nature of that burden. But it seems that the rule goes further; and that when a state of circumstances exist which is very unlikely to exist without a burden, he is affected with notice." Purchasers may be affected with constructive notice by the appearance of the property (*Allen* v. *Seckham*, *ubi supra*; *Attorney-General* v. *Biphosphated Guano Co.*, 11 Ch. D. 327), by the fact of a third person being in possession (*Daniels* v. *Davidson*, 16 Vesey, 249; *Cavander* v. *Bulteel*, L. R. 9 Ch. App. 79), and by notice of a deed forming part of the chain of title (*Patman* v. *Harland*, 17 Ch. D. 353).

Notice to a counsel, solicitor, or agent concerned for a purchaser, amounts to constructive notice to the purchaser himself if the notice is acquired in the same transaction (*Sheldon* v. *Cox*, 2 Ed. 228; *Hamilton* v. *Rayse*, 2 Sch. and L. 315). The principle was extended to notice acquired in other transactions (*Fuller* v, *Bennett*, 2 Hare, 394). Now, however, the notice must be acquired in the *same* transaction.

In *Patman* v. *Harland*, 17 Ch. D., it was held that a lessee has constructive notice of his lessor's title, and is fixed with constructive

Sub-sec. 2.

p. 188.

notice of any restrictive covenant affecting the property, notwithstanding an express contract with the lessor allowing a breach of the restrictive covenant, and notwithstanding express representations on the part of the lessor that the property is not subject to any restrictive covenants, and that the effect of sec. 2, sub-sec. 1, of the Vendor and Purchaser Act, 1874 (App. p. xi.); which provides that a lessee shall not be entitled to call for the title to the freehold, is to put a lessee in the same position as if he had contracted not to investigate his lessor's title, and he is fixed to the same extent with constructive notice.

Leases.

Sec. 4. sub-sec. 1 & 2, p. 189. Contract for lease not part of title to lease.

(1.) Where either before or after the commencement of the Act a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assignee, form part of the title to the lease.

NOTE.—This provision will relieve an assignee from having to satisfy himself that the terms of the contract were within the authority given by the settlement or other instrument under which the contract was made.

Separate Trustees.

Sec. 5. Section 5, sub-sec. 1 & 2, p. 189. Appointment of separate sets of trustees.

(1.) In cases of trusts created either before or after the commencement of the Act, on an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

This section should be read in connection with sec. 31 of the Conveyancing Act, 1881 (*ante*, p. 54). Until this Act, under a single power of appointment it was not possible to divide the trust by appointing separate trustees to deal with separate parts of the trust estate. This difficulty is met by the present section, but the power can only apparently be exercised in cases where new trustees of the whole trust are being appointed, and there is no power to enable existing trustees to retire from part of their trust.

Powers.

A person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power; and after disclaimer shall not be capable of exercising or joining in the exercise of the power.

Sec. 6. Sub-sec. 1, p. 189. Disclaimer of power by trustees.

On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

Sub-sec. 2. After disclaimer power may be exercised by remaining donees.

The section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Sub-sec. 3. Application of section.

NOTE.—By sec. 52 of the Conveyancing Act, 1881 (*see* pp. 162), the donee of a power may release or contract not to exercise the same. He can now disclaim the power.

Married Women.

In certain sections of the Fines and Recoveries Acts there shall be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

Sec. 7. Sub-sec. 1, p. 190. Substitution of one commission for two in taking acknowledgments of deeds by married women.

Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

Sub-sec. 2. Memorandum of acknowledgment purporting to be duly signed to be conclusive.

Sec. 7.
p. 190.

Sub-sec. 3. Deed not to be impeachable on ground that acknowledgment taken before a person interested.

(3.) A deed acknowledged before or after the commencement of the Act by a married woman, before a person authorised to take acknowledgments, shall not be impeachable by reason only that such person was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise; and general rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such rule shall make invalid any acknowledgment; and those rules shall, as regards England, be deemed rules of Court within the Appellate Jurisdiction Act, 1876, and shall, as regards Ireland, be deemed rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

General rules to prevent interested person from taking acknowledgments.

Rules to be deemed rules of Court.

Sub-sec. 4. Repeal of Acts.

The enactments described in the schedule to the Act are repealed.

Sub-sec. 5. Extent of repeal.

The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

Sub-sec. 6. Certificates of deeds executed before the Act to be lodged as if the Act had not passed.

(6.) Notwithstanding anything in the section, the certificate of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged and filed in the like manner as if the section had not been enacted.

Sub-sec. 7. Index to all certificates to be kept.

There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and other particulars; and certificates

lodged after the commencement of this Act shall be entered in the index as soon as may be.

Sec. 7. p. 190.

Sub-sec. 8. Office copies of certificates to be furnished, and to be evidence of acknowledgment.

An office copy of any such certificate, filed before or after the commencement of this Act, shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

NOTE.—The practical effect of this section is, in the case of deeds executed after the 31st December, 1882, to substitute one commissioner for two in taking acknowledgments of married women, and to abolish certificates of acknowledgments. The index referred to in sub-sec. 7 applies only to cases of deeds acknowledged prior to the 31st December, 1882, but the certificates of which have not been filed prior to that date. The certificate having been abolished, the affidavit in verification is also abolished, and in future an acknowledgment will be perfected by the commissioner simply signing the usual endorsement on the deed (for form of endorsement *see post*, p. 317). By secs. 1, 2 and 5 of the Married Women's Property Act, 1882, it is provided that real property belonging to women married after the 1st January 1883, or acquired after that date by women whenever married, shall belong to them for their separate use. Property held by a woman for her separate use can now be disposed of by her as if she were unmarried; and by sec. 1 of the Act of 1882, which allows a married woman to dispose of her real and personal property as if she was a *feme sole*, it is doubtful whether acknowledgments are any longer necessary. It is conceived, however, that having regard to the provisions of this section, it was not the intention of the legislature to abolish acknowledgments by ambiguous language of an Act passed in the same session of Parliament—a view which is strengthened by the obvious protection acknowledgments at present afford to married women—and it is possible the Married Women's Property Act 1882, will be construed accordingly.

Powers of Attorney.

Sec. 8. Sub-sec. 1 & 2, p. 192.

Effect of power of attorney for value made absolutely irrevocable.

If a power of attorney executed after the 31st December, 1882, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy,

Sec. 8.
p. 192.

unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, &c., of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, &c., of the donor of the power.

NOTE.—This section is confined to purchasers, and is only to apply where the power is made irrevocable. The Courts have, however, decided that powers given for value are not revoked by bankruptcy, marriage, lunacy, or death (*Winch* v. *Keeley*, 1 T. R. 619; *Parnham* v. *Hurst*, 8 M. & W. 743; *Brazier* v. *Hudson*, 9 Sim. 1), so this section cannot be said to enact any new principle.

Sec. 9.
Sub-sec. 1 & 2, p. 193.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

If a power of attorney executed after the commencement of the Act, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the time of the instrument, then, in favour of a purchaser—

(i.) The power shall not be revoked during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power, without the concurrence of the donee of the power, or the death, &c., of the

donor of the power, had not been done or happened; and

Sec. 9. p. 193.

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, &c., of the donor of the power within that fixed time.

NOTE.—This section is of practical value, and is supplemental to sec. 47 of the Conveyancing Act, 1881 (p. 160). It will enable a vendor who, on account of absence or other reason, cannot execute the conveyance, to authorise its execution by another without it being incumbent on the purchaser to ascertain that the donor was alive at the time of the execution of the conveyance.

Executory Limitations.

Sec. 10. Sub-sec. 1, p. 194. Restriction on executory limitations.

Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

Sub-sec. 2.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

This section affects an alteration in the law in regard to a matter not of common occurrence. The operation of the section can best be illustrated by an example: Freehold land is given by deed or will to A. for life, and if he should die without issue, then to B. The effect of such a gift under the present law would be that, if at the death of A. he had no issue living, B. would be entitled to the land; but under the law as altered by this section, A. becomes absolutely entitled to the fee if and as soon as he has a child who attains 21. It will be noticed that the section includes estates in fee and for years as well as life estates.

Long Terms.

Sec. 11. p. 194. Amendment of enactment respecting long terms.

Section 65 of the Conveyancing Act of 1881 shall apply to and include every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee-simple.

NOTE.—This section amends sec. 65 of the Act of 1881 (p. 166). The operation of the section can be illustrated as follows:—A lease for 1,000 years is granted to A. at an annual rent, or with a right of re-entry for condition broken. Such a lease would be incapable of being enlarged into a fee simple. But if A. granted a sub-lease to B., say for 600 years, in consideration of a premium, without reserving any rent or right of re-entry, B. might, under the Act of 1881, have enlarged his term into a fee simple, to the prejudice of the freeholder, notwithstanding that the term of B.'s lessor was incapable of being so enlarged. This section protects the freeholder from such a danger; but before a long term can in future be safely enlarged into a fee simple, it will be necessary to investigate the lessor's title. If the lessor is not willing to allow this investigation, and he has nothing to gain by doing so, there is no means of compelling him to produce his title.

Mortgages.

Sec. 12. p. 194. Re-conveyance on mortgage.

The right of the mortgagor, under sec. 15 of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor; and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

NOTE.—This section must be read as one with sec. 15 of the Conveyancing Act 1881 (p. 133), and, as pointed out in the note to that section, it follows the decision in *Trevan* v. *Smith*, 1882

(30 W. R. 716, 51 L. J. Ch. App. 621). The provision which regulates the right of priority to the transfer appears very unsatisfactory. A mortgagor or a subsequent incumbrancer is apparently entitled to have a reconveyance if the prior puisne incumbrancers have not applied to redeem. Frequently the prior incumbrancers may not know of the requisition by the mortgagor or subseqent incumbrancer, or may not be in a position to redeem. It seems hard that they should be prejudiced by the rights conferred by the sections in question, and these may tend to make persons still more careful in lending money on or purchasing an equity of redemption.

Sec. 12. p. 194.

Saving.

13. The repeal by the Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity of any instrument executed, or of anything done before the commencement of this Act; nor shall the same affect any action, or thing then pending or uncompleted; and every such action and thing may be carried on and completed as if there had been no such repeal in this Act.

Sec. 13. p. 195. Restriction on repeals in this Act.

NOTE.—This saving clause is larger in its terms than sec. 71 of the Conveyancing Act, 1881 (p. 172).

Schedule.

NOTE.—The Schedule sets out four Acts, part of which are repealed by sec. 7 of this Act. The repealed parts relate to acknowledgment of deeds by married women.

THE

SOLICITORS' REMUNERATION ACT, 1881.

(44 & 45 Vic. c. 44.)

SUMMARY AND NOTES.

The object of the Act is to make better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious business.

Preliminary.

Sec. 1. p. 197. Short title, extent, interpretation.

The short title of the Act is the "Solicitors' Remuneration Act, 1881." Scotland is excepted from its operation. The terms "solicitor," "client," "person," "Incorporated Law Society," and "provincial law societies or associations," are defined.

The Act applies to Ireland. The definition of the word "client" is very wide, and includes any person for the time being liable to pay to a solicitor any costs.

General Orders.

Sec. 2. p. 198. Power to make General Orders for remuneration in conveyancing, &c.

In England the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Incorporated Law Society, and the president of one of the provincial law societies, to be nominated by the Lord

Sec. 2. p. 198.

Chancellor, or any three of them, the Lord Chancellor being one, and in Ireland the persons occupying corresponding positions, excepting the president of a provincial law society, or any three of them, the Lord Chancellor being one, may make and revoke any General Order for regulating the remuneration of solicitors in matters of conveyancing and other non-contentious business.

The right of the provincial law societies to have a voice in matters relating to solicitors, is, perhaps, for the first time legislatively recognised by this Act, and speaks much for their growing importance. The General Order that has been issued is signed by the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and E. Harvey, Esq., the President of the Incorporated Law Society of Liverpool. The President of the Incorporated Law Society of England has not signed the order.

Sec. 3. p. 199. Communication to Incorporated Law Society.

One month before any General Order shall be made the proposed order shall be submitted to the Council of the Incorporated Law Society, who are to be at liberty to offer observations thereon, and the Lord Chancellor and the other authorised persons are to take such observations into consideration within one month from the day the order shall have been submitted to the Council, and they can then make such order as originally submitted or subject to such alterations as they think fit.

The fact of the General Order being issued without the signature of the President of the Incorporated Law Society is an indication that, in this instance, the suggestions of the Law Society have not been fully adopted.

Sec. 4. p. 199. principles of remuneration.

The remuneration prescribed by the order may be according to a scale of rates of commission, or percentage, or by a gross sum, or a fixed sum for each document prepared or perused, without regard to length, or in any other mode, and the amount of the remuneration may be regulated with reference to the following considerations:—

The position of the party for whom the solicitor is concerned in any business; that is, whether as vendor, or as purchaser, lessor, or lessee, mortgagor or mortgagee, and the like:

The place, district, and circumstances at or in which the business or part thereof is transacted: Sec. 4. p. 199.

The amount of the capital money or of the rent to which the business relates:

The skill, labour and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act.

It will be seen that the General Order specifies a scale of charges in the case of sales, purchases, mortgages and leases, and in other cases it modifies the present system by increasing the charge for drawing and perusing documents, and also increases the allowance to solicitors for journeys from home. It may perhaps be assumed that the considerations enumerated, which were to be taken into account in framing the order, will also afford some guide to the taxing master on a taxation.

Any General Order may authorise a solicitor to take security from his client for future costs and for allowance of interest. Sec. 5. p. 200. Security for costs and allowance of interest.

The necessary authority is given by the General Order, clause 7. The interest to be allowed is, however, not to commence until the amount due is ascertained either by agreement or by taxation.

No General Order shall take effect until it has been laid before both Houses of Parliament and one month thereafter has elapsed, and if within that month an address is presented to the Queen by either House the whole or part of the order may be disallowed. Sec. 6. p. 200. Order to be laid before Houses of Parliament; disallowance on address.

The General Order was laid before the Houses of Parliament on the 10th August, 1882, and no address has been moved, nor notice of any motion for that purpose given. The order, however, does not come into operation until the 1st January, 1883, and Parliament is to meet in the interval, but no address is at all likely to be moved.

As long as any General Order is in operation the taxation of bills shall be regulated thereby. Sec. 7. p.200. Effect of Order as to taxation.

Agreement.

Sec. 8. Sub-secs. 1 to 4, p. 201. Power for solici or and client to agree as to remuneration.

A solicitor may make an agreement with his client, with respect to conveyancing matters, before, after, or in the course of the transaction of any such business, for the remuneration of the solicitor, either by a gross sum, by commission, by salary, or otherwise. The agreement must be in writing, and signed by the person to be bound thereby, or his agent in that behalf, and may or may not cover all disbursements; and it can be sued upon, impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if under any order for taxation such agreement, being relied upon by the solicitor, shall be objected to by the client as unfair or unreasonable, the taxing master may inquire into the facts and certify the same to the Court, and the Court may cancel the agreement, or reduce the amount payable thereunder.

Sec. 9. p. 202. Restriction on Solicitors' Act, 1870.

The "Attorneys' and Solicitors' Act, 1870," shall not apply to any business to which this Act relates.

The provisions of sec. 8 are in substitution for somewhat similar provisions which were contained in the Solicitors' Act of 1870.

GENERAL ORDER

Made in pursuance of the Solicitors' Remuneration Act, 1881.

SUMMARY AND NOTES.

The order is to come into operation on the 1st January, 1883. Schedule 1 of the order is not to apply to real property, the title to which has been registered under the Acts 25 & 26 Vic. c. 53, 25 & 26 Vic. c. 67, and 38 & 39 Vic. c. 87.

Clause 1, p. 203. Commencement Exception from Schedule I.

The above-mentioned Acts are—The "Land Registry Act, 1862," the "Declaration of Title Act, 1862," and the "Land Transfer Act, 1875."

Subject to the exception aforesaid, the remuneration of solicitors in respect of sales, purchases and mortgages completed is to be that prescribed in Part I. of Schedule 1 to the order. In respect of leases and agreements for leases, or conveyances reserving rent, or agreements for the same, it is to be that prescribed in Part II. of the same schedule; and in respect of uncompleted matters of the kind before mentioned, and of all other conveyancing and non-contentious matters, the remuneration is to be regulated according to the present system, as altered by Schedule 2.

Clause 2, p. 204. Nature of business to which remuneration prescribed by Schedule applies.

The effect of this provision can only be gleaned from a careful consideration of the schedules. It will be seen that the charges in respect of sales, purchases and mortgages, are dealt with by a scale of commissions, varying in amount according to the nature of the business and the amount of the purchase or mortgage money, and that the charges in respect of leases are also allowed according to a scale varying in amount with the amount of the annual rent reserved. A very large class of conveyancing matters are not affected by the scale charges, including settlements, mining leases or licences, or agreements therefor, reconveyances, transfers of mortgage, or further charges, as well as uncompleted matters of the kind covered by the scale charges. In respect of these matters it will still be necessary to make out and deliver a bill of costs

Clause 2, p. 204. according to the present system, as altered however by Schedule 2. By this schedule the charges have been materially increased in respect of the important items of attendances and drawing and perusing documents.

Clause 3, p. 205. Property in drafts.

Drafts and copies made in the course of business are to be the property of the client.

This provision, although possibly satisfying the requirements of abstract right, would, if interpreted to mean that drafts and copies should be handed over to clients with their deeds, be attended with no little inconvenience to solicitors. Apart from the fact that drafts and copies used in one matter may subsequently materially assist a solicitor in carrying out a matter of a similar nature, it happens not unfrequently that some question of default is raised after a matter has been completed, the solicitor's defence to which rests, it may be upon interlineations, deletions and marginal and foot notes in a draft. In the course of time the points in question fade from recollection, and it is, to say the least, awkward that a solicitor should on some future day be liable to be called upon to explain a matter the means of explaining which is not in his possession. Say the question is one whether a will is made in accordance with instructions. The draft may have been read through and altered and then copied, and in the end handed over, and the client not attaching any value to a mutilated copy of his will, may subsequently destroy the same. A solicitor would, in such a case, obviously be placed in the greatest difficulty in subsequently meeting a charge of negligence in carrying out his instructions in drawing the will. In view of this danger it may be wise for solicitors in many, if not in all transactions, to keep copies of drafts which they may have to hand over, even though such copies have to be made at their own expense.

Clause 4, p. 205. Disbursements not included in scale allowances.

The remuneration prescribed by Schedule 1 is not to include stamps and all disbursements reasonably and properly paid; nor any extra work occasioned by changes occurring in the course of business, such as the death or insolvency of a party to the transaction; nor any business of a contentious character, nor proceedings in any Court; but it is to include law stationers' charges, and allowances for time of the solicitor and his clerks, and for copying, parchment, and similar disbursements.

The advantages of a scale in cases of sales, purchases and mortgages are so many, that solicitors can well afford to be bound thereby, even though the scale will not be equally remunerative in all cases. Thus, in register counties a solicitor will have to draw

a memorial, make searches, and register the deed without being entitled to any additional remuneration. It is doubtful whether the words which allow for extra work are sufficiently comprehensive. The words "a party to the transaction" would probably be held to mean a party to the contract, and if this is the case it would not apply to changes occurring in the course of the business by a necessary party to the conveyance, who is not a party to the contract, dying or becoming bankrupt. These scale charges are also exclusive of business of a contentious character and proceedings in any Court. These words are somewhat indefinite; it is not quite clear, for instance, whether the scale would cover the payment of money into Court, though probably it is not intended to cover this.

Clause 4, p. 205.

A solicitor may be allowed a proper additional remuneration in respect of any business which is required to be and is by special exertion carried through in an exceptionally short space of time.

Clause 5, p. 205. Additional remuneration for special exertion.

The exact interpretation of this clause is somewhat open to doubt. The business must not only have been carried through by special exertion, but must have been "required to be" so carried through. This seems to imply that the special exertion must be exerted at the request of the client, in order to entitle the solicitor to the additional remuneration, unless it should also be held to give a discretion to a taxing master to consider whether the matter was not one which, having regard to the nature of the transaction, "required to be" carried through in an exceptionally short space of time.

In all cases to which the scales prescribed by Schedule 1 apply, the solicitor can, before undertaking the business, by writing communicated to his client, elect to be remunerated according to the present system as altered, by Schedule 2. In the absence of any such election his remuneration shall be that prescribed by the order.

Clause 6, p. 205. Solicitor can elect to charge otherwise than by scale.

This right of election is important. The definition of the word "client" is, according to clause 8, to be the same as in sec. 1 of the Solicitors' Remuneration Act. In that Act the word includes every person liable to pay a bill of costs. Where a solicitor is to be paid by his own client, to use the word in the more restricted sense in which it is generally used, the solicitor is not likely, except in very exceptional cases, to intimate that the scale of charges which the law says is sufficient will not satisfy him. The case, however, is different when the solicitor is to be paid by a person for whom he is in no way concerned. To take the ordinary case of a lease. This is pre-

Clause 6, p. 205.

pared by the lessor's solicitor, but paid for by the lessee, generally a stranger. If the lease runs to any length, it may probably be found that the old system, as altered by Schedule 2, will be more profitable than the scale. In such a case as this it is not unlikely that a solicitor would intimate to the intending lessee, who for the purpose of the order is his client, his election to be paid by the old system.

Security for costs and interest.

A solicitor may take security from his client for the amount to become due for business to be transacted, and for interest thereon, as soon as the amount is ascertained by agreement or taxation. A solicitor may charge interest at four per cent. per annum on his disbursements and costs from the expiration of one month from demand from the client; and if the same are payable by an infant or out of a fund not presently available, such demand may be made on the parent or guardian, or the trustee or other person liable.

This clause has reference to sec. 5 of the Solicitors' Remuneration Act (*see* p. 200), whereby it is provided that the General Order may authorise security to be given for future costs and the allowance of interest. The right to interest on costs is a very useful provision. The mere sending of a bill of costs to a client would probably be considered a sufficient demand to entitle a solicitor to claim interest after a month, but to avoid any doubt it will be desirable that the solicitor should accompany the bill with an unequivocal request for payment.

Clause 8, p. 206. Definitions.

The words "solicitor," "client," and "person" used in the Order and Schedule have the meanings ascribed to them in sec. 1 of the "Solicitors' Remuneration Act, 1881."

See p. 197 for the definitions contained in the Act.

SCHEDULE I.

PART I.

Scale of Charges on Sales, Purchases and Mortgages, and Rules applicable thereto.

See scale on p. 207. It will be noticed that the scale allows a charge to a vendor's solicitor for negotiating a sale privately, and for conducting a sale by auction, whether or not the property is sold, and to a purchaser's solicitor for negotiating a purchase, and to a mortgagee's solicitor for negotiating a loan. These allowances are, however, not chargeable if a commission is payable to an auctioneer (Rule 11, Part I., Schedule 1), and it seems clear from this that the authorities contemplate the solicitor acting in these matters as an auctioneer. It is open to question whether the allowance to a purchaser's solicitor for negotiating a purchase is not objectionable, as it is apparent that his duty to his client is in this instance brought in conflict with his personal interest.

RULES.

Rule 1, Part I., p. 208. Sale in separate lots.

On sale by auction the scale is to apply to each lot sold, except where property is held under the same title and the same purchaser buys several lots and one abstract only is delivered, and one conveyance taken, in which case the commission is chargeable upon the aggregate prices of the lots.

Under the "Conveyancing and Law of Property Act, 1881," sec. 3, sub-sec. 7, 44 & 45 Vic. c. 41, a purchaser of two or more lots held wholly or partly under the same title is entitled to only one abstract of the common title except at his own expense. If, therefore, a purchaser required more than one abstract, this would not entitle a vendor's solicitor to more than the scale allowance upon the aggregate prices of the lots.

Rule 2, Part I., p. 208. Attempted sale and subsequent effectual sale.

The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in, and a sale is afterwards negotiated by the solicitor, he is entitled to charge commission on the

Rule 2, Part I., p. 208.

reserved price where the property is not sold, and also one-half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the first attempted sale; and for each subsequent ineffectual sale he is to charge according to the present system, as altered by Schedule 2. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is chargeable in addition, less one-half of the commission previously allowed on the first attempted sale. The provisions of this rule as to commission on sales, or attempted sales, by auction, are to be subject to Rule 2.

The last sentence of this rule is perplexing. Probably the words "Rule 2" were inserted in error for "Rule 11," as it will be seen that the latter rule provides that the scale allowances for selling by auction are not payable if a commission is paid to an auctioneer.

Rule 3, Part I., p. 208. Allowance to solicitor acting for both mortgagor and mortgagee.

A solicitor concerned for both mortgagor and mortgagee is entitled to the mortgagee's solicitor's charges and one-half of those allowed to a mortgagor's solicitor up to £5,000, and one-fourth on any excess over that sum.

A solicitor who arranges a mortgage transaction between two clients would, according to the scale, be entitled to a commission for negotiating the loan in addition to the other allowances. This may bring the total payment to be made by the mortgagor to a considerable sum, and in cases where the mortgagor's title was previously known to the solicitor the allowance to him might even be excessive.

Rule 4, Part I., p. 209. Charges allowed for parties having distinct interests.

If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is entitled to charge £2 additional for each such party after the first.

Rule 5, Part I., p. 209. Charges allowed certain parties to a deed.

Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, his charges are to be dealt with under the old system as altered by Schedule 2.

Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the fees for investigating title and preparing the mortgage deed up to £5,000, and one-fourth on any excess above £5,000, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any).

Rule 6, Part I., p. 209. Charges allowed for conveyance and mortgage.

Compare Rule 3. Under the present rule the solicitor acting for the purchaser and mortgagor, and also the mortgagee, does not appear to be entitled to any more than he would receive if acting simply for a mortgagor and mortgagee. This it is assumed was not intended.

Fractions of £100, under £50, are to be reckoned as £50. Above £50 as £100.

Rule 7, Part I., p. 209. Fractions how charged.

Where the prescribed remuneration would under the scale amount to less than £5, the prescribed remuneration shall be £5, except on transactions under £100, in which cases the remuneration of the solicitor for the vendor, purchaser, mortgagor or mortgagee, is £3.

Rule 8, Part I. p. 209. Minimum charges.

Thus, in the case of a sale where the purchase-money is £150, and where the vendor's solicitor negotiates the sale, the vendor's solicitor would, according to the scale, be entitled to £1 10s. for negotiating and £2 5s. for carrying out the sale—together £3 15s. The minimum charge for £100 and over being, however, fixed at £5, the vendor's solicitor is entitled to that sum, and this whether he negotiates the sale or not.

Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgagee purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption.

Rule 9, Part I., p. 209. Charges on purchase subject to incumbrances

The scale as to mortgages is to apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or on any previous transfer; and it is not to apply to further charges where the title has been so previously investigated. In these cases the

Rule 10, Part I., p. 209. Charges on transfers of mortgage and further charges

Rule 10, Part I., p. 209.

remuneration is to be regulated according to the present system as altered by Schedule 2. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

Rule 11, Part I., p. 210. Scale allowances for conducting sale and negotiating, when chargeable.

The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply to cases where the solicitor of a vendor or purchaser arranges the sale or purchase, and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer or estate or other agent. As to a mortgagee's solicitor, it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

It may, perhaps, become the practice for a solicitor having the conduct of a sale to employ an auctioneer at a fixed fee for the mere purpose of officiating in the rostrum. This could not be held to be a payment of commission; but in such a case the solicitor would probably have to pay the fee out of his allowance, and not charge it against his client as a disbursement. The right to a commission by a mortgagee's solicitor for negotiating a loan will, it is observed, only be payable if the loan is obtained from a person for whom he acts. This would mean a person for whom he acts in that particular transaction. In case of sales under the Lands Clauses Consolidation Act (8 & 9 Vic. c. 18) and the other Acts specified, the charges will be according to the present system as altered by Schedule 2.

Rule 12, Part I., p. 210. Alternate allowance for negotiations.

In cases where, under the previous portion of the schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed by the first column on all transactions up to £2,000, and to charge in addition those allowed by the second column on all amounts above £2,000 and not exceeding £5,000, and

further to charge those allowed by the third column on all amounts above £5,000 and not exceeding £50,000, instead of the rates allowed up to the amounts mentioned in those columns respectively. Rule 12, Part I. p. 210.

The intent of this rule is not at first sight obvious. It appears to suggest that if a solicitor, being entitled to certain allowances, chooses to take less, he can do so. Possibly the rule is intended to meet the cases of solicitors who, being indisposed to claim an auctioneer's commission, may, notwithstanding, be remunerated on a higher scale than if they had had no actual part in the negotiations.

Part II.

Scale of Charges as to Leases, or Agreements for Leases, at Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreements for the same).

See Scale, p. 211. The charge where the rent exceeds £100, and does not exceed £500, is stated to be "£7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each subsequent £100 of rent." In view of Rule 6 to Part II., which provides that fractions of £5 are to be reckoned as £5, it seems clear that the allowance is £2 10s. *per cent.* in respect of each subsequent £100. The omission of the words "per cent." are calculated to give rise to some misconception. The scale it will be noticed applies to leases or agreements for leases. An agreement for a lease followed in a short interval by a lease, is not an uncommon transaction. It does not appear whether or not the scale allowance would be properly chargeable separately upon the agreement and the lease, or whether one allowance is intended to cover both. As in such a case agreements are not, as in the case of vendors and purchasers, specifically included in the business covered by the scale, it may be that the solicitor would be entitled, in addition to the scale allowance, to charge for the agreement according to the present system, as altered by Schedule 2.

Scale of Charges as to Conveyances in Fee, or for any other Freehold Estate, Reserving Rent, or Building Leases Reserving Rent, or other Long Leases not at Rack Rent (except Mining Leases), or Agreements for the same respectively.

See Scale, p. 211.

RULES APPLICABLE TO PART II. OF SCHEDULE 1.

As to all Leases, or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

Rule 1, Part II., p. 212. Charge for abstract.

Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule 2.

Rule 2, Part II., p. 212. Solicitor for lessor and lessee.

Where a solicitor is concerned for both vendor and purchaser, or lessor or lessee, he is to charge the vendor's or lessor's solicitor's charges and one-half of that of the purchaser's or lessee's solicitor.

See charges set out in Table ix., p. 242.

Rule 3, Part II., p. 212. Joinder of parties to mortgage in lease.

Where a mortgagee or mortgagor joins in the conveyance or lease, the vendor's or lessor's solicitor is to charge £1 1s. extra.

This charge would appear to be payable whether or not the same solicitor is as well concerned for the mortgagee or mortgagor.

Rule 4, Part II., p. 212. Charge of solicitor of third person joining in lease.

Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule 2.

Rule 5, Part II., p. 212. Charge where premium paid for lease.

Where a conveyance or lease is partly in consideration of a premium, and partly of a rent, then, in addition to the remuneration prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such premium.

The scale provides that a lessee's solicitor is to be entitled to *one-half the amount payable to the lessor's solicitor*. This provision it is assumed would not apply to the scale allowance on a premium, the lessee's solicitor being it is thought entitled to his full allowance thereto under this rule.

Rule 6, Part II., p. 212. Fractions.

Fractions of £5 are to be reckoned as £5.

SCHEDULE 2.

Instructions for and Drawing and Perusing Deeds, Wills, and other Documents.

See Schedule, p. 213. This schedule modifies the present system, and is to apply in all conveyancing cases not covered by the scale, or in respect of uncompleted matters which, if completed, would be thus covered. The principal changes are the allowance of 2s. a folio for drawing, and 1s. for perusing; the increase in the allowance for an attendance from the time-honoured charge of 6s. 8d. to 10s.; and the allowance to a solicitor for a journey from home for not less than seven hours, employed on business or in travelling, is £5 5s., or if less than seven hours is employed, at the rate of 15s. per hour. The charge of 10s. for attendance and the charges allowed in respect of journeys from home, may however in extraordinary cases be increased or diminished by the taxing master as he may think fit.

The General Order is signed by the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and E. Harvey, Esq., the President of the Liverpool Law Society. The order is not signed by the President of the Incorporated Law Society of England.

A General Order applying to Ireland has not yet been made, but it is assumed that one similar to the English Order will be issued in course of time.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881

(44 & 45 Vic. c. 41).

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CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes.

PART I.

PRELIMINARY.

PRELIMINARY.

Short title; commencement; extent.

Sum., p. 29.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the 31st day of December, 1881.

(3.) This Act does not extend to Scotland.

Interpretation. of property, land, &c.

Sum., p. 29.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest:

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land:

Sec. 2.
Sum., p. 29.

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income:

(iv.) Manor includes lordship, and reputed manor or lordship:

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called: Sec. 2. Sum., p. 29.

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicil:

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

Sec. 2.
Sum., p. 29.

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document, include any such instrument, copy, extract, abstract, or other document, being in writing or in print, or partly in writing and partly in print:

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

PART II.

SALES AND OTHER TRANSACTIONS.

SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

Contracts for Sale.

Application of stated conditions of sale to all purchases.
Sum., p. 30.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced or noticed; and he shall assume, unless

the contrary appears, that the recitals contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

Sec. 3. Sum., p. 30.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further, that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or

Sec. 3.
Sum., p. 30.

inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9). This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Completion of contract after death.
Sum., p. 32.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest,

descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

Sec. 4. Sum., p. 32.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next-of-kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale.

Discharge of Incumbrances on Sale.

Provision by Court for incumbrances, and sale freed therefrom.

Sum., p. 32.

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or

Sec. 5.
Sum., p. 32.

vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

General Words.

General Words.

General words in conveyances of land, buildings, or manor.
Sum., p. 33.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3). A conveyance of a manor shall be deemed to include

and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge, and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rent, seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

Sec. 6. Sum., p. 33.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

Covenants for Title.

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated,

Covenants for title to be implied. Sum., p. 33.

Sec. 7. Sum., p. 33.

by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

On conveyance for value, by beneficial owner.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to convey.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not

Quiet enjoyment.

being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him,

Sec. 7. Sum., p. 33.

Freedom from incumbrance.

Further assurance.

Sec. 7.
Sum., p. 33.

execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

On conveyance of leaseholds for value, by beneficial owner.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of lease.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be

deemed to include a conveyance in consideration of marriage):

Sec. 7. Sum., p. 33.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On mortgage by beneficial owner.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive and thenceforth quietly hold, occupy, and enjoy, or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under

Right to convey.

Quiet enjoyment.

Freedom from incumbrance.

Sec. 7.
Sum., p. 33.
Further assurance.

any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

On mortgage of leaseholds, by beneficial owner.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of lease.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed and is in full force, unforfeited and unsurrendered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be

paid, observed and performed, have been paid, observed and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions and agreements, or any of them:

Sec. 7. Sum., p. 33.

Payment of rent and performance of covenants.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely):

On settlement.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to

For further assurance, limited.

Sec. 7.
Sum., p. 34.

whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required:

On conveyance by trustee or mortgagee.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

Against incumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is

expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

Sec. 7. Sum., p. 34.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Sec. 7.
p. 35.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

Rights of purchaser as to execution.
Sum., p. 36.

Execution of Purchase Deed.

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this Act.

Production and Safe Custody of Title Deeds.

Acknowledgment of right to production, and undertaking for safe custody of documents.
Sum., p. 36.

Production and Safe Custody of Title Deeds.

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right

through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

Sec. 9. Sum., p. 36.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorised in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or

Sec. 9.
Sum., p. 36.

extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspec-

tion, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

Sec. 9. Sum., p. 36.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

PART III.

LEASES.

LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessees' part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to, and shall go with, the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

Rent and benefit of lessee's covenants to run with reversion. Sum., p. 38.

(2.) This section applies only to leases made after the commencement of this Act.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall

Obligation of lessor's covenants to run with reversion. Sum., p. 38.

Sec. 11.
Sum., p. 38.

go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Apportionment of conditions on severance, &c.
Sum., p. 38.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease, as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

On sub-demise, title to leasehold reversion not to be required.
Sum., p. 38.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have

effect subject to the terms of the contract and to the provisions therein contained.

Sec. 13. Sum., p. 38.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

Forfeiture.

Restrictions on and relief against forfeiture of leases.

Sum., p. 39.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee,

Sec. 14.
Sum., p. 30.

also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

PART IV.

MORTGAGES.

Obligation on mortgagee to transfer instead of re-conveying. Sum., p. 41.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds. Sum., p. 42.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages. Sum., p. 42.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

Sec. 17.
Sum., p. 42.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Leases.

Leases.
Leasing powers of mortgagor and of mortgagee in possession.
Sum., p. 43.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorises are—

(i.) An agricultural or occupation lease for any term not exceeding 21 years; and

(ii.) A building lease for any term not exceeding 99 years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding 30 days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes. Sec. 18. Sum., p. 43.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease, duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

Sec. 18. Sum., p. 43.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

Powers incident to estate or interest of mortgagee. Sum., p. 45.

Sale; Insurance; Receiver; Timber.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate as the mortgage money; and

Sec. 19. Sum., p. 45.

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

Regulation of exercise of power of sale.
Sum., p. 46.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance, receipt, &c., on sale.
Sum., p. 47.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the

power, shall have his remedy in damages against the person exercising the power. Sec. 21. Sum., p. 47.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the Mortgagees' receipts, discharges, &c. Sum. p. 48.

Sec. 22.
Sum., p. 48.

power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder, and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage, or from the proceeds of securities comprised in his mortgage, shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.
Sum., p. 48.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

Sec. 23. Sum., p. 48.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

Appointment powers, remuneration, and duties of receiver. Sum., p. 49.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in

Sec. 24.
Sum., p. 40.

satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

(i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

Action respecting Mortgage.

Sale of mortgaged property in action for foreclosure, &c.

Sum., p. 50.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

15 & 16 Vic. c. 86, s. 48.

(7.) This section does not extend to Ireland.

PART V.

STATUTORY MORTGAGE.

STATUTORY MORTGAGE.

Form of statutory mortgage in schedule.

Sum., p. 51.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage in schedule.

Sum., p. 52.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory

transfer of mortgage, being in such one of the three forms (A) and (B) and (C) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require and the provisions of this section shall apply thereto.

Sec. 27. Sum., p. 52.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at

Sec. 27.
Sum., p. 52.

the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

Implied covenants, joint and several.
Sum., p. 52.

28.—In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Form of re-conveyance of statutory mortgage in schedule.
Sum., p. 53.

29.—A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

PART VI.

TRUST AND MORTGAGE ESTATES ON DEATH.

TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of trust and mortgage estates on death.

Sum., p. 53.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section 48 of the Land Transfer Act, 1875, are hereby repealed.

37 & 38 Vic. c. 78.
38 & 39 Vic. c. 87.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

PART VII.

TRUSTEES AND EXECUTORS.

TRUSTEES AND EXECUTORS.

Appointment of new trustees, vesting of trust property, &c.

Sum., p. 54.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more

Sec. 31.
Sum., p. 54.

than 12 months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

(2.) On an appointment of a new trustee the number of trustees may be increased.

(3.) On an appointment of a new trustee it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator; and those

relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section. Sec. 31. Sum., p. 54.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place. Retirement of trustee. Sum., p. 55.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects Powers of new trustee appointed by Court. Sum., p. 55.

Sec. 33. Sum., p. 55.

act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees. Sum., p. 55.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity or property as is only transferable in books kept by a Company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Sec. 34. Sum., p. 55.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

Power for trustees for sale to sell by auction, &c. Sum., p. 55.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

Trustees' receipts. Sum., p. 56.

(2.) This section applies to trusts created either before or after the commencement of this Act.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

Power for executors and trustees to compound, &c. Sum., p. 56.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they

Sec. 37. Sum., p. 56.

think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

Powers to two or more executors or trustees. Sum., p. 56.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

PART VIII.

MARRIED WOMEN.

MARRIED WOMEN.

Power for Court to bind interest of married woman. Sum., p. 57.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by

judgment or order, with her consent, bind her interest in any property. Sec. 39. Sum., p. 57.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto. Power of attorney of married woman. Sum., p. 57.

(2.) This section applies only to deeds executed after the commencement of this Act.

PART IX.

INFANTS.

INFANTS.

41.—Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877. Sales and leases on behalf of infant owner. 40 & 41 Vic. c. 18. Sum., p. 57.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply. Management of land and receipt and application of income during minority. Sum., p. 58.

Sec. 42.
Sum., p. 58.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the

way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

Sec. 42. Sum., p. 58.

(i.) If the infant attains the age of 21 years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect

Sec. 42. Sum., p. 58.

subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

Application by trustees of income of property of infant for maintenance, &c. Sum., p. 60.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of 21 years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

PART X.

RENTCHARGES AND OTHER ANNUAL SUMS.

RENTCHARGES AND OTHER ANNUAL SUMS.

Remedies for recovery of annual sums charged on land.

Sum., p. 60.

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for 21 days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for 40 days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum are fully

Sec. 44. Sum., p. 60.

paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

Redemption of quit-rents and other perpetual charges. Sum., p. 61.

45.—(1.) Where there is a quit-rent, chief-rent, rent-charge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners. Sec. 45. Sum., p. 61.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

PART XI.

POWERS OF ATTORNEY.

Powers of Attorney.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by

Execution under power of attorney. Sum., p. 62.

Sec. 46. Sum., p. 62.

the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

Payment by attorney under power without notice of death, &c., good. Sum., p. 62.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Deposit of original instruments creating powers of attorney. Sum., p. 62.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents

of the instrument and of the deposit thereof in the Central Office. Sec. 48. Sum., p. 62.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

PART XII.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

Use of word grant unnecessary. Sum., p. 63.

49.—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Conveyance by a person to himself, &c. Sum., p. 63.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2.) This section applies only to conveyances made after the commencement of this Act.

Words of limitation in fee or in tail. Sum., p. 63.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

Sec. 51.
Sum., p. 63.

(2.) This section applies only to deeds executed after the commencement of this Act.

Powers simply collateral.
Sum., p. 64.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Construction of supplemental or annexed deed.
Sum., p. 64.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

Receipt in deed sufficient.
Sum., p. 64.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, evidence for subsequent purchaser.
Sum., p. 64.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon, shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, authority for payment to solicitor.
Sum., p. 65.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the

person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

Sec. 56. Sum., p. 65.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

57. Deeds in the form of and using the expressions in the forms given in the fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Sufficiency of forms in fourth schedule. Sum., p. 65.

58. (1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

Covenants to bind heirs, &c. Sum., p. 65.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

Covenants to extend to heirs, &c. Sum., p. 66.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of

Sec. 59. Sum., p. 66.

the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of covenant with two or more jointly. Sum., p. 66.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of advance on joint account, &c. Sum., p. 66.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mort-

gagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 61. Sum., p. 66.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

Grants of easements, &c., by way of use. Sum., p. 67.

(2.) This section applies only to conveyances made after the commencement of this Act.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

Provision for all the estate, &c. Sum., p. 67.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

Sec. 63.
Sum., p. 67.

(3.) This section applies only to conveyances made after the commencement of this Act.

Construction of implied covenants.
Sum., p. 67.

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

PART XIII.

LONG TERMS.

LONG TERMS.

Enlargement of residue of long term into fee simple.
Sum., p. 67.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term, in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner and subject to the restrictions in this section provided.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with

restraint on anticipation or not, and then without his concurrence; Sec. 65. Sum., p. 67.

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and at the time of enlargement the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible

Sec. 65. Sum., p. 67.

interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an enclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

PART XIV.

ADOPTION OF ACT.

ADOPTION OF ACT.

Protection of solicitor and trustees adopting Act. Sum., p. 69.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper. Sec. 66. Sum., p. 69.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

PART XV.

MISCELLANEOUS.

MISCELLANEOUS.

Regulations respecting notice.

Sum., p. 69.

67.—(1.) Any notice required or authorised by this Act to be served shall be in writing.

(2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorised by this Act to

Sec. 67. Sum., p. 69.

be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Short title of 5 & 6 Will. IV. c. 62. Sum., p. 70.

68. The Act described in Part II. of the first schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

PART XVI.

COURT; PROCEDURE; ORDERS.

COURT PROCEDURE; ORDERS.

Regulations respecting payments into Court and applications. Sum., p. 70.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser, notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor, notice shall be served in the first instance on the purchaser.

(6.) On any application, notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to

make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application. Sec. 69. Sum., p. 70.

(8.) General Rules for purposes of this Act shall be deemed Rules of Court within section 17 of the Appellate Jurisdiction Act, 1876, and may be made accordingly. 39 & 40 Vic. c. 59, s. 17.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

Orders of Court conclusive. Sum., p. 71.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section 40 of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act. 40 & 41 Vic. c. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding

Sec., 70. Sum., p. 71.

is at the commencement of this Act pending for having it set aside or determined to be invalid.

PART XVII.

REPEALS.

REPEALS.

Repeal of enactments in Part III. of second Schedule; restriction on all repeals. Sum., p. 72.

71.—(1.) The enactments described in Part III. of the second schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section 40 of the Settled Estates Act, 1877, or any former Act repealed by that Act.

PART XVIII.

IRELAND.

IRELAND.

Modifications respecting Ireland. Sum., p. 72.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that division.

(4.) The proper office of the Supreme Court of Judica-

ture in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

Sec. 72. Sum., p. 72.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

40 & 41 Vic. c. 57, s. 69.

73.—(1.) Section 5 of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section 7 of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

Death of bare trustee intestate, &c. 37 & 38 Vic. c. 78. Sum., p. 73.

(2.) This section extends to Ireland only.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED.

PART I.

1 & 2 Vic. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.

2 & 3 Vic. c. 11.—An Act for the better protection of purchasers against judgments, Crown debts, lis pendens, and fiats in bankruptcy.

18 & 19 Vic. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of lis pendens, and life annuities or rentcharges.

22 & 23 Vic. c. 35.—An Act to further amend the law of property and to relieve trustees.

23 & 24 Vic. c. 38.—An Act to further amend the law of property.

23 & 24 Vic. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

27 & 28 Vic. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.

28 & 29 Vic. c. 104.—The Crown Suits, &c. Act, 1865.

31 & 32 Vic. c. 54.—The Judgments Extension Act, 1868.

PART II.

5 & 6 Will. IV. c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

22 & 23 Vic. c. 35, in part	An Act to further amend the law of property, and to relieve trustees - - - Sections 4 to 9.	in part; namely,—
23 & 24 Vic. c. 126, in part	The Common Law Procedure Act, 1860 - - - - Section 2.	in part; namely,—

PART II.

15 & 16 Vic. c. 86 - in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery Section 48.	in part; namely,—

PART III.

8 & 9 Vic. c. 119 - -	An Act to facilitate the conveyance of real property.
23 & 24 Vic. c. 145 - in part.	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills - - - in part; namely,— Parts II. and III. (sections 11 to 30).

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882, between *A.* of [*&c.*] of the one part and *M.* of [*&c.*] of the other part WITNESSETH that in consideration of the sum of £ now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as mortgagor and as beneficial owner hereby conveys to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

*** *Variations in this and subsequent forms to be made (if required) for leasehold land or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *M.* of [*&c.*] of

the one part and *T.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *M.* by *T.* being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum *M.* hereby acknowledges the receipt *M.* as mortgagee hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum *A.* hereby acknowledges the receipt *A.* as mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* of [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882

and made between [*&c.*] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS *B.* is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* of which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [*&c.*] To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882 of† the sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

[*Or, in case of further advance, after* aforesaid *at* * *insert* and also in consideration of the further sum of £ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, *and after* of *at* † *insert* the sums of £ and £ making together]

*** *Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

PART III.

Deed of Statutory Re-conveyance of Mortgage.

THIS INDENTURE made by way of statutory re-conveyance of mortgage the day of 1884 between *C.* of [*&c.*] of the one part and *B.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made

between [*&c.*] WITNESSETH that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

*** *Variations as noted above.*

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

THIS INDENTURE OF MORTGAGE made the day of 1882 between *A.* of [*&c.*] of the one part and *B.* of [*&c.*] and *C.* of [*&c.*] of the other part WITNESSETH that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which sum *A.* hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of

AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [*&c.*] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemp-

tion following (namely) that if *A.* or any person claiming under him shall on the day of 1882 pay to *B.* and *C.* the sum of £ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him re-convey the premises to *A.* or the persons claiming under him AND *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required.*]

In witness &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*] WITNESSETH that in consideration of the further sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1883 between *A.* of [*&c*] of the first part *B.* of [*&c.*] and *C.* of [*&c.*] of the second part and *M.* of [*&c.*] of the third part WHEREAS by an indenture dated [*&c.*] and made between [*&c.*] the lands hereinafter mentioned were con-

veyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [*&c.*] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as *B.* and *C.* hereby acknowledges. NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.* and of the sum of £ paid to *A.* those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ *B.* and *C.* hereby acknowledge the receipt and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures. [*Add, if required,* And *A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof].

In witness &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882 between *John M.* of [*&c.*] of the first part *Jane S.* of [*&c.*] of the second part and *X.* of [*&c.*] and *Y.* of [*&c.*] of the third part WITNESSETH that in consideration of the

intended marriage between *John M.* and *Jane S.*, *John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of 500 years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here, if thought desirable,* to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [*Insert trusts of term of* 500 *years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired.*]

In witness &c.

CONVEYANCING ACT, 1882.

(45 & 46 Vic. c. 39).

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CONVEYANCING ACT, 1882.

(45 & 46 Vic. c. 39.)

An Act for further improving the Practice of Conveyancing; and for other purposes. [10*th August*, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short titles; commencement; extent; interpretation. Sum., p. 75.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

44 & 45 Vic. c. 41.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

Sec. 1.
Sum., p. 75.

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

3 & 4 Will. IV. c. 92.

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and "Recoveries, and for the substitution of more "simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for "the abolition of Fines and Recoveries, and for "the substitution of more simple modes of "Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act.

4 & 5 Will. IV. c. 92.

Searches.

Official negative and other certificates of searches for judgments, crown debts, &c.
Sum., p. 75.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or

other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

Sec. 2, Sum., p. 75.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

39 & 40 Vic. c. 59. 44 & 45 Vic. c. 68.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such rule had not been enacted or made.

Sec. 2.
Sum., p. 75.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory rule.

(12.) This section does not extend to Ireland.

Notice.

Restriction on constructive notice.
Sum., p. 78.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction

contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

Sec. 3. Sum., p. 78.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

Contract for lease not part of title to lease. Sum., p. 80.

(2.) This section applies to leases made either before or after the commencement of this Act.

Separate Trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

Appointment of separate sets of trustees. Sum., p. 80.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

Disclaimer of power by trustees. Sum., p. 81.

Sec. 6.
Sum., p. 81.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Acknowledgment of deeds by married women.
Sum., p. 81.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before

a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

Sec. 7. Sum., p. 81.

39 & 40 Vic. c. 59. 44 & 45 Vic. c. 68. 40 & 41 Vic. c. 57.

(4.) The enactments described in the schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married

Sec. 7.
Sum., p. 81.

women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

Powers of Attorney.

Effect of power of attorney, for value, made absolutely irrevocable.
Sum., p. 83.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of

the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

Sec. 8. Sum., p. 83.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time. Sum., p. 84.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Executory Limitations.

Restriction on executory limitations. Sum., p. 85.

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

Amendment of enactment respecting long terms. Sum., p. 86.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

Reconveyance on mortgage. Sum., p. 86.

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor,

and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer. Sec. 12. Sum., p. 86.

Saving.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act: nor shall the same affect the validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act. Restriction on repeals in this Act. Sum., p. 87.

SCHEDULE.

REPEALS.

3 & 4 Will. 4, c. 74. in part	The Fines and Recoveries Act—in part; namely,— Sections 84, from and including the words "and the same judge," to the end of that section. Sections 85 to 88, inclusive.	Section 7 (4).
4 & 5 Will. 4, c. 92. in part	The Fines and Recoveries (Ireland) Act - - - in part; namely,— Section 75, from and including the words "and the same Judge," to the end of that section. Sections 76 to 79, inclusive.	
17 & 18 Vic. c. 75. -	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.	
41 & 42 Vic. c. 23. -	The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.	

THE

SOLICITORS' REMUNERATION ACT, 1881.

(44 & 45 Vic. c. 44.)

For Making Better Provision respecting the Remuneration of Solicitors in Conveyancing and other Non-contentious Business. [22*nd August*, 1881

Preliminary.

1.—(1.) This Act may be cited as the "Solicitors' Remuneration Act, 1881." Short title, extent, interpretation. Sum. p. 89.

(2.) This Act does not extend to Scotland.

(3.) In this Act—

"Solicitor" means a solicitor or proctor qualified according to the statutes in that behalf:

"Client" includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses, or disbursements:

Sec. 1.
Sum., p. 89.

"Person" includes a body of persons corporate or unincorporate:

"Incorporated Law Society" means, in England, the society referred to under that title in the Act passed in the session of the 23rd and 24th years of Her Majesty's reign, intituled "An Act to amend the Laws relating to Attorneys, Solicitors, Proctors and Certificated Conveyancers," and in Ireland, the society referred to under that title in the "Attorneys' and Solicitors' Act (Ireland), 1866":

"Provincial law societies or associations" means all bodies of solicitors in England incorporated by Royal Charter, or under the Joint Stock Companies' Act, other than the Incorporated Law Society above mentioned.

General Order.

Power to make General Orders for remuneration in conveyancing, &c.
Sum. p. 89.

2. In England, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the Lord Chancellor to serve during the tenure of office of such president, or any three of them, the Lord Chancellor being one; and in Ireland, the Lord Chancellor, the Lord Chief Justice of Ireland, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the Lord Chancellor being one, may from time to time make any such General Order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not

being business in any action, or transacted in any Court, or in the chambers of any judge or master, and not being otherwise contentious business, and may revoke or alter any such order.

Sec. 2. Sum., p. 89.

3. One month at least before any such general order shall be made, the Lord Chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon; and the Lord Chancellor, and the other persons hereby authorised to make such order, shall take into consideration any such observations or suggestions which may be submitted to them by the said council within one month from the day on which such communication to the said council shall have been made as aforesaid, and, after duly considering the same, may make such order, either in the form or to the effect originally communicated to the said council, or with such alterations, additions, or amendments, as to them may seem fit.

Communication to Incorporated Law Society. Sum., p. 90.

4. Any general order under this Act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other considerations; namely,

Principles of remuneration Sum,. p. 90.

The position of the party for whom the solicitor is concerned in any business; that is, whether as

Sec. 4.
Sum., p. 90.

vendor or as purchaser, lessor, or lessee, mortgagor or mortgagee, and the like;

The place, district, and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act.

Security for costs, and interest on disbursements.
Sum., p. 91.

5. Any general order under this Act may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such order, to be ascertained by taxation or otherwise, and the allowance of interest.

Order to be laid before Houses of Parliament; disallowance on address.
Sum., p. 91.

6.—(1.) Any general order under this Act shall not take effect unless and until it has been laid before each House of Parliament, and one month thereafter has elapsed.

(2.) If within that month an address is presented to the Queen by either House, seeking the disallowance of the order, or part thereof, it shall be lawful for Her Majesty, by order in council, to disallow the order, or that part, and the order or part disallowed shall not take effect.

Effect of order as to taxation.
Sum., p. 91.

7. As long as any general order under this Act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Agreements.

8.—(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any general order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such an amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor remuneration accordingly.

Power for solicitor and client to agree on form and amount of remuneration. Sum., p. 92.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement or for reducing the amount payable under the same, the Court or judge shall have power to order such

Sec. 8.
Sum., p. 93.

cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

Restriction on Solicitors' Act, 33 & 34 Vic. c. 28.
Sum. p. 92.

9. The Attorneys' and Solicitors' Act, 1870, shall not apply to any business to which this Act relates.

GENERAL ORDER

AS TO SCALE OF SOLICITORS' FEES IN CONVEYANCING TRANSACTIONS,

MADE IN PURSUANCE OF THE

SOLICITORS' REMUNERATION ACT, 1881

(44 & 45 Vic. c. 44).

WE, the Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, the Right Honourable John Duke, Lord Coleridge, Lord Chief Justice of England, the Right Honourable Sir George Jessel, Master of the Rolls, and Enoch Harvey, Esq., President of the Incorporated Law Society of Liverpool (being four of the persons in that behalf authorised by the Statute 44 & 45 Vic. c. 44), do hereby, in pursuance and execution of the powers given to us by the said Statute, and of all other powers and authorities enabling us in that behalf, order and direct in manner following:—

1. This order is to take effect from and after the 31st day of December, 1882, except that Schedule 1 hereto shall not apply to transactions respecting real property, the title to which has been registered under the Acts of 25 & 26 Vic. c. 53, 25 & 26 Vic. c. 67, and 38 & 39 Vic. c. 87. Sum. p. 93.

Sum., p. 93.

2. Subject to the exception aforesaid, the remuneration of a solicitor in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business, not being business in any action, or transacted in any Court, or in the chambers of any judge or master, is to be regulated as follows, namely:—

(*a.*) In respect of sales, purchases, and mortgages completed, the remuneration of the solicitor having the conduct of the business, whether for the vendor, purchaser, mortgagor, or mortgagee, is to be that prescribed in Part I. of Schedule 1 to this order, and to be subject to the regulations therein contained.

(*b.*) In respect of leases, and agreements for leases, of the kinds mentioned in Part II. of Schedule 1 to this order, or conveyances reserving rent, or agreements for the same, when the transactions shall have been completed, the remuneration of the solicitor having the conduct of the business is to be that prescribed in Part II. of such Schedule 1.

(*c.*) In respect of business not hereinbefore provided for, connected with any transaction, the remuneration for which, if completed, is hereinbefore, or in Schedule 2 hereto prescribed, but which is not in fact completed, and in respect of settlements, mining leases or licences, or agreements therefor, reconveyances, transfers of mortgage, or further charges, not provided for hereinbefore or in Schedule 1 hereto, assignments of leases not by way of purchase or mortgage, and in respect of all other deeds or documents, and of all other business the remuneration for which is not hereinbefore, or in

Schedule 1 hereto prescribed, the remuneration is to be regulated according to the present system as altered by Schedule 2 hereto. Clause 7. Sum., p. 93.

3. Drafts and copies made in the course of business, the remuneration for which is provided for by this order, are to be the property of the client. Sum., p. 94.

4. The remuneration prescribed by Schedule 1 to this order is not to include stamps, counsel's fees, auctioneer's or valuer's charges, travelling or hotel expenses, fees paid on searches to public officers, on registrations, or to stewards of manors, costs of extracts from any register, record, or roll, or other disbursement reasonably and properly paid, nor any extra work occasioned by changes occurring in the course of any business, such as the death or insolvency of a party to the transaction, nor is it to include any business of a contentious character, nor any proceedings in any Court, but it shall include law stationers' charges, and allowances for time of the solicitor and his clerks, and for copying and parchment, and all other similar disbursements. Sum., p. 94.

5. In respect of any business which is required to be, and is, by special exertion, carried through in an exceptionally short space of time, a solicitor may be allowed a proper additional remuneration for the special exertion, according to the circumstances. Sum., p. 95.

6. In all cases to which the scales prescribed in Schedule 1 hereto shall apply, a solicitor may, before undertaking any business, by writing under his hand, communicated to the client, elect that his remuneration shall be according to the present system as altered by Schedule 2 hereto; but if no such election shall be made, his remuneration shall be according to the scale prescribed by this order. Sum., p. 95.

7. A solicitor may accept from his client, and a client Sum., p. 96.

Clause 7.
Sum., p. 96.

may give to his solicitor, security for the amount to become due to the solicitor for business to be transacted by him, and for interest on such amount, but so that interest is not to commence till the amount due is ascertained, either by agreement or taxation. A solicitor may charge interest at four per cent. per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client. And in cases where the same are payable by an infant, or out of a fund not presently available, such demand may be made on the parent or guardian, or the trustee or other person liable.

Sum., p. 96.

8. In this order, and the schedules hereto, the following words and expressions shall have the meanings ascribed to them in the 3rd sub-section of section 1 of the Solicitors' Remuneration Act, 1881, viz. :—

Solicitor,
Client,
Person.

SCHEDULE 1, PART I.

Scale of Charges on Sales, Purchases and Mortgages, and Rules applicable thereto.

SCALE.

	(1.) For the 1st £1,000.	(2.) For the 2nd and 3rd £1,000.	(3.) For the 4th and each subsequent £1,000 up to £10,000.	(4.) For each subsequent £1,000 up to £100,000.*
Vendor's solicitor for negotiating a sale of property by private contract	20s. per £100.	20s. per £100.	10s. per £100.	5s. per £100.
Do., do., for conducting a sale of property by public auction, including the conditions of sale—				
When the property is sold	20s. ,,	10s. ,,	s. ,,	2s. 6d. ,,
When the property is not sold, then on the reserved price.	10s. ,,	5s. ,,	2s. 6d. ,,	1s. 3d. ,,
[N.B.—A minimum charge of £5 to be made whether a sale is effected or not.]				
Do., do., for deducing title to freehold, copyhold, or leasehold property, and perusing and completing conveyance (including preparation of contract, or conditions of sale (if any)	30s. ,,	20s ,,	10s. ,,	5s. ,,
Purchaser's solicitor for negotiating a purchase of property by private contract.....	20s. ,,	20s. ,,	10s. ,,	5s. ,,
Do., do., for investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance (including perusal and completion of contract (if any) ...	30s. ,,	20s. ,,	10s. ,,	5s. ,,
Mortgagor's solicitor for deducing title to freehold, copyhold or leasehold property, perusing mortgage, and completing	30s. ,,	20s. ,,	10s. ,,	5s. ,,
Mortgagee's solicitor for negotiating loan.....	20s. ,,	20s. ,,	5s. ,,	2s. 6d. ,,
Do., do., for investigating title to freehold, copyhold, or leasehold property, and preparing and completing mortgage	30s. ,,	20s. ,,	10s. ,,	5s. ,,
Vendor's or mortgagor's solicitor for procuring execution and acknowledgment of deed by a married woman	£2 10s. extra.			

*Every transaction exceeding £100,000 charged for as if it were for £100,000.

Note, p. 97.

RULES.

Sum., p. 97.

1. The commission for deducing title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate prices of the lots.

Sum., p. 97.

2. The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in and terms of sale are afterwards negotiated and arranged by the solicitor, he is to be entitled to charge commission according to the above scales on the reserved price where the property is not sold, and also one-half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the first attempted sale, and for each subsequent sale ineffectually attempted he is to charge according to the present system, as altered by Schedule 2 hereto. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is to be chargeable in addition, less one-half of the commission previously allowed on the first attempted sale. The provisions of this rule as to commission on sales or attempted sales by auction are to be subject to Rule 2.

Sum., p. 98.

3. Where a solicitor is concerned for both mortgagor and mortgagee, he is to be entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to £5,000, and on any excess above £5,000, one-fourth thereof.

4. If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is to be entitled to charge £2 additional for each such party after the first. Sum., p. 98.

5. Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule 2 hereto. Sum., p. 98.

6. Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title, and preparing the mortgage deed up to £5,000, and on any excess above £5,000, one-fourth thereof, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any). Sum., p. 99.

7. Fractions of £100, under £50, are to be reckoned as £50. Fractions of £100, above £50, are to be reckoned as £100. Sum., p. 99.

8. Where the prescribed remuneration would, but for this provision, amount to less than £5, the prescribed remuneration shall be £5, except on transactions under £100, in which cases the remuneration of the solicitor for the vendor, purchaser, mortgagor, or mortgagee is to be £3. Sum., p. 99.

9. Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgagee purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption. Sum., p. 99.

10. The above scale as to mortgages is to apply to Sum., p. 99.

Rule 10.
Sum., p. 99.

transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or on any previous transfer; and it is not to apply to further charges where the title has been so previously investigated. As to such transfers and further charges, the remuneration is to be regulated according to the present system as altered by Schedule 2 hereto. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

Sum., p. 100.

11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply to cases where the solicitor of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer, or estate or other agent. As to a mortgagee's solicitor, it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In cases of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

Sum., p. 100.

12. In cases where, under the previous portion of this schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed by the first column on all transactions up to £2,000, and to charge in addition those allowed by the second column on all amounts above £2,000 and not exceeding £5,000, and further to charge those allowed by the third column on all amounts above £5,000 and not exceeding £50,000, instead of the rates allowed up to the amounts mentioned in those columns, respectively.

PART II.

Scale of Charges as to Leases, or Agreements for Leases, at a Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreement for the same).

Lessor's solicitor for preparing, settling, and completing lease and counterpart:— Note, p. 101.

Where the rent does not exceed £100	£7 10s. per cent, on the rental, but not less in any case than £5.
Where the rent exceeds £100 and does not exceed £500	£7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each subsequent £100 of rent.
Where the rent exceeds £500	£7 10s. in respect of the first £100 of rent, £2 10s. in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100.
Lessee's solicitor for perusing draft and completing.....	One-half of the amount payable to the lessor's solicitor.

Scale of Charges as to Conveyance in Fee, or for any other Freehold Estate, Reserving Rent, or Building Leases Reserving Rent, or other long Leases not at Rack Rent (except Mining Leases), or Agreements for the same respectively.

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed £5	£5.
Where it exceeds £5, and does not exceed £50	The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5.
Where it exceeds £50, but does not exceed £150	The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Where it exceeds £150 ...	The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor for perusing draft and completing	One-half of the amount payable to the vendor's or lessor's solicitor.

RULES APPLICABLE TO PART II. OF SCHEDULE 1.

As to all Leases or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

Sum., p. 102. 1. Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule 2.

Sum., p. 102. 2. Where a solicitor is concerned for both vendor and purchaser, or lessor or lessee, he is to charge the vendor's or lessor's solicitor's charges and one-half of that of the purchaser's or lessee's solicitor.

Sum., p. 102. 3. Where a mortgagee or mortgagor joins in a conveyance or lease, the vendor's or lessor's solicitor is to charge £1 1s. extra.

Sum., p. 102 4. Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule 2.

Sum., p. 102. 5. Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium.

Sum., p. 102. 6. Fractions of £5 are to be reckoned as £5.

SCHEDULE 2.

INSTRUCTIONS FOR AND DRAWING AND PERUSING DEEDS, WILLS, AND OTHER DOCUMENTS.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, &c., the allowance shall be—

For drawing	2s. per folio.
For engrossing	8d. „ „
For fair copying	4d. „ „
For perusing	1s. „ „

ATTENDANCES.

	s.	d.
In ordinary cases	10	0

In extraordinary cases the taxing master may increase or diminish the above charge if for any special reasons he shall think fit.

ABSTRACTS OF TITLE (WHERE NOT COVERED BY THE ABOVE SCALES).

	s.	d.
Drawing each brief sheet of eight folios	6	8
Fair copy	3	4

JOURNEYS FROM HOME.

	£	s.	d.
In ordinary cases for every day of not less than seven hours employed on business or in travelling	5	5	0
Where a less time than seven hours is so employed ... per hour	0	15	0

In extraordinary cases the taxing master may increase or diminish the above allowance if for any special reasons he shall think fit.

(Signed) SELBORNE, C.
COLERIDGE, C. J.
G. JESSELL, M. R.
E. HARVEY.

TABLE I.

SCALE OF CHARGES

On Sale by Private Contract of Freehold, Copyhold, or Leasehold Property.

VENDOR'S SOLICITOR.

Purchase-money.	Deducing title and perusing and completing conveyance (including preparation of contract or conditions of sale, if any.			In addition for negotiating a sale by private contract where no commission is payable to an auctioneer or estate or other agent.		
	Column No. 1.			Column No. 2.		
	£	s.	d.	£	s.	d.
Under £100	3	0	0		—	
£100	5	0	0*		—	*
150	5	0	0*		—	*
200	5	0	0*		—	*
250	5	0	0*	1	5	0*
300	5	0	0*	2	10	0*
350	5	5	0	3	10	0
400	6	0	0	4	0	0
450	6	15	0	4	10	0
500	7	10	0	5	0	0
550	8	5	0	5	10	0
600	9	0	0	6	0	0
650	9	15	0	6	10	0
700	10	10	0	7	0	0
750	11	5	0	7	10	0
800	12	0	0	8	0	0
850	12	15	0	8	10	0
900	13	10	0	9	0	0
950	14	5	0	9	10	0
1,000	15	0	0	10	0	0
1,050	15	10	0	10	10	0
1,100	16	0	0	11	0	0
1,150	16	10	0	11	10	0
1,200	17	0	0	12	0	0
1,250	17	10	0	12	10	0
1,300	18	0	0	13	0	0
1,350	18	10	0	13	10	0
1,400	19	0	0	14	0	0
1,450	19	10	0	14	10	0
1,500	20	0	0	15	0	0

* These charges are inserted to meet the minimum remuneration of £5. (See Schedule 1, Part I., Rule 8.)

TABLE I.—VENDOR'S SOLICITOR (*continued*).

Purchase-money.	Deducing title and perusing and completing conveyance (including preparation of contract or conditions of sale, if any).			In addition for negotiating a sale by private contract where no commission is payable to an auctioneer or estate or other agent.		
	Column No. 1.			Column No. 2.		
	£	s.	d.	£	s.	d.
£1,550	20	10	0	15	10	0
1,600	21	0	0	16	0	0
1,650	21	10	0	16	10	0
1,700	22	0	0	17	0	0
1,750	22	10	0	17	10	0
1,800	23	0	0	18	0	0
1,850	23	10	0	18	10	0
1,900	24	0	0	19	0	0
1,950	24	10	0	19	10	0
2,000	25	0	0	20	0	0
2,100	26	0	0	21	0	0
2,200	27	0	0	22	0	0
2,250	27	10	0	22	10	0
2,300	28	0	0	23	0	0
2,400	29	0	0	24	0	0
2,500	30	0	0	25	0	0
2,600	31	0	0	26	0	0
2,700	32	0	0	27	0	0
2,750	32	10	0	27	10	0
2,800	33	0	0	28	0	0
2,900	34	0	0	29	0	0
3,000	35	0	0	30	0	0
3,100	35	10	0	30	10	0
3,200	36	0	0	31	0	0
3,250	36	5	0	31	5	0
3,300	36	10	0	31	10	0
3,400	37	0	0	32	0	0
3,500	37	10	0	32	10	0
3,600	38	0	0	33	0	0
3,700	38	10	0	33	10	0
3,750	38	15	0	33	15	0
3,800	39	0	0	34	0	0
3,900	39	10	0	34	10	0
4,000	40	0	0	35	0	0
4,100	40	10	0	35	10	0
4,200	41	0	0	36	9	0
4,300	41	10	0	36	10	0
4,400	42	0	0	37	0	0

TABLE I.—VENDOR'S SOLICITOR (*continued*).

Purchase-money.	Deducing title and perusing and completing conveyance (including preparation of contract or conditions of sale, if any).			In addition for negotiating a sale by private contract where no commission is payable to an auctioneer or estate or other agent.		
	Column No. 1.			Column No. 2.		
	£	s.	d.	£	s.	d.
£4,500	42	10	0	37	10	0
4,600	43	0	0	38	0	0
4,700	43	10	0	38	10	0
4,800	44	0	0	39	0	0
4,900	44	10	0	39	10	0
5,000	45	0	0	40	0	0
6,000	50	0	0	45	0	0
7,000	55	0	0	50	0	0
8,000	60	0	0	55	0	0
9,000	65	0	0	60	0	0
10,000	70	0	0	65	0	0
11,000	72	10	0	67	10	0
12,000	75	0	0	70	0	0
13,000	77	10	0	72	10	0
14,000	80	0	0	75	0	0
15,000	82	10	0	77	10	0
20,000	95	0	0	90	0	0
25,000	107	10	0	102	10	0
30,000	120	0	0	115	0	0
35,000	132	10	0	127	10	0
40,000	145	0	0	140	0	0
45,000	157	10	0	152	10	0
50,000	170	0	0	165	0	0
60,000	195	0	0	190	0	0
70,000	220	0	0	215	0	0
80,000	245	0	0	240	0	0
90,000	270	0	0	265	0	0
100,000 and upwards	295	0	0	290	0	0

For procuring execution and acknowledgment of deed by a married woman, £2 10s. extra.

The remuneration in this Table is calculated in accordance with the rates given in the Schedule No. 1, viz. :—

Column No. 1 ... ... { 30s. per £100 for 1st £1,000.
20s. ,, ,, 2nd and 3rd £1,000.
10s. ,, ,, 4th and each subsequent £1,000 to £10,000.
5s. ,, ,, each subsequent £1,000 up to £100,000.

Column No. 2 ... ... { 20s. per £100 up to £3,000.
10s. ,, ,, 4th and each subsequent £1,000 up to £10,000.
5s. ,, ,, for each subsequent £1,000 up to £100,000.

TABLE II.

SCALE OF CHARGES

On Sale or Attempted Sale by Public Auction of Freehold, Copyhold, or Leasehold Property.

VENDOR'S SOLICITOR.

Purchase-money, or reserve price.	For conducting a sale of property by public auction, preparing conditions of sale, deducing title, perusing and completing conveyance, when property sold and where no commission is payable to an auctioneer.			Conducting a sale by public auction (including conditions of sale) when property not sold, then on the reserve price where no commission is payable to an auctioneer.		
	Column No. 1.			Column No. 2.		
	£	s.	d.	£	s.	d.
Under £100	8	0	0	5	0	0
£100	10	0	0	5	0	0
150	10	0	0	5	0	0
200	10	0	0	5	0	0
250	10	0	0	5	0	0
300	10	0	0	5	0	0
350	10	5	0	5	0	0
400	11	0	0	5	0	0
450	11	15	0	5	0	0
500	12	10	0	5	0	0
550	13	15	0	5	0	0
600	15	0	0	5	0	0
650	16	5	0	5	0	0
700	17	10	0	5	0	0
750	18	15	0	5	0	0
800	20	0	0	5	0	0
850	21	5	0	5	0	0
900	22	10	0	5	0	0
950	23	15	0	5	0	0
1,000	25	0	0	5	0	0
1,050	25	15	0	5	2	6
1,100	26	10	0	5	5	0
1,150	27	5	0	5	7	6
1,200	28	0	0	5	10	0
1,250	28	15	0	5	12	6
1,300	29	10	0	5	15	0
1,350	30	5	0	5	17	6
1,400	31	0	0	6	0	0
1,450	31	15	0	6	2	6
1,500	32	10	0	6	5	0
1,550	33	5	0	6	7	6
1,600	34	0	0	6	10	0
1,650	34	15	0	6	12	6
1,700	35	10	0	6	15	0

TABLE II.—Vendor's Solicitor (*continued*).

Purchase-money, or reserve price.	For conducting a sale of property by public auction, preparing conditions of sale, deducing title, perusing and completing conveyance, when property sold and where no commission is payable to an auctioneer.			Conducting a sale by public auction (including conditions of sale) when property not sold, then on the reserve price where no commission is payable to an auctioneer.		
	Column No. 1.			Column No. 2.		
	£	s.	d.	£	s.	d.
£1,750	36	5	0	6	17	6
1,800	37	0	0	7	0	0
1,850	37	15	0	7	2	6
1,900	38	10	0	7	5	0
1,950	39	5	0	7	7	6
2,000	40	0	0	7	10	0
2,100	41	10	0	7	15	0
2,200	43	0	0	8	0	0
2,250	43	15	0	8	2	6
2,300	44	10	0	8	5	0
2,400	46	0	0	8	10	0
2,500	47	10	0	8	15	0
2,600	49	0	0	9	0	0
2,700	50	10	0	9	5	0
2,750	51	5	0	9	7	6
2,800	52	0	0	9	10	0
2,900	53	10	0	9	15	0
3,000	55	0	0	10	0	0
3,100	55	15	0	10	2	6
3,200	56	10	0	10	5	0
3,250	56	17	6	10	6	3
3,300	57	5	0	10	7	6
3,400	58	0	0	10	10	0
3,500	58	15	0	10	12	6
3,600	59	10	0	10	15	0
3,700	60	5	0	10	17	6
3,750	60	12	6	10	18	9
3,800	61	0	0	11	0	0
3,900	61	15	0	11	2	6
4,000	62	10	0	11	5	0
4,100	63	5	0	11	7	6
4,200	64	0	0	11	10	0
4,300	64	15	0	11	12	6
4,400	65	10	0	11	15	0
4,500	66	5	0	11	17	6
4,600	67	0	0	12	0	0
4,700	67	15	0	12	2	6
4,800	68	10	0	12	5	0
4,900	69	5	0	12	7	6

TABLE II.—Vendor's Solicitor (*continued*).

Purchase-money, or reserve price.	For conducting a sale of property by public auction, preparing conditions of sale, deducing title, perusing and completing conveyance, when property sold and where no commission is payable to an auctioneer.			Conducting a sale by public auction (including conditions of sale) when property not sold, then on the reserve price where no commission is payable to an auctioneer.		
	Column No. 1.			Column No. 1.		
	£	s.	d.	£	s.	d.
£5,000	70	0	0	12	10	0
6,000	77	10	0	13	15	0
7,000	85	0	0	15	0	0
8,000	92	10	0	16	5	0
9,000	100	0	0	17	10	0
10,000	107	10	0	18	15	0
11,000	111	5	0	19	7	6
12,000	115	0	0	20	0	0
13,000	118	15	0	20	12	6
14,000	122	10	0	21	5	0
15,000	126	5	0	21	17	6
20,000	145	0	0	25	0	0
25,000	163	15	0	28	2	6
30,000	182	10	0	31	5	0
35,000	201	5	0	34	7	6
40,000	220	0	0	37	10	0
45,000	238	15	0	40	12	6
50,000	257	10	0	43	15	0
60,000	295	0	0	50	0	0
70,000	332	10	0	56	5	0
80,000	370	0	0	62	10	0
90,000	407	10	0	68	15	0
100,000 and upwards	445	0	0	75	0	0

For procuring execution and acknowledgment of deed by a married woman, £2 10s. extra.

The remuneration in this Table is calculated in accordance with the scale given in Schedule No. 1, viz.:—

Column No. 1 from the two following scales...	30s. per £100	for 1st £1,000.
	20s. ,, ,,	2nd and 3rd £1,000.
	10s. ,, ,,	4th and each subsequent £1,000 up to £10,000.
	5s. ,, ,,	each subsequent £1,000 up to £100,000.
	20s. ,, ,,	1st £1,000.
	10s. ,, ,,	2nd and 3rd £1,000.
	5s. ,, ,,	4th and each subsequent £1,000 up to £10,000.
	2s. 6d. ,,	each subsequent £1,000 up to £100,000.
Column No. 2	10s. per £1	for 1st £1,000.
	5s. ,,	2nd and 3rd £1,000.
	2s. 6d.	4th and each subsequent £1,000 up to £10,000.
	1s. 3d.	each subsequent £1,000 up to £100,000.

TABLE III.

SCALE OF CHARGES

On Purchase of Freehold, Copyhold or Leasehold Property.

PURCHASER'S SOLICITOR.

Purchase-money.	Investigating title and preparing and completing conveyance (including perusal and completion of contract if any).			In addition for negotiating a purchase by private contract where no commission is payable to an auctioneer, estate or other agent.			Stamp Duty.		
	Column No. 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
Under £100	3	0	0		—		According to scale.		
100	5	0	0		—	*	0	10	0
150	5	0	0		—	*	0	15	0
200	5	0	0		—	*	1	0	0
250	5	0	0	1	5	0*	1	5	0
300	5	0	0	2	10	0*	1	10	0
350	5	5	0	3	10	0	1	15	0
400	6	0	0	4	0	0	2	0	0
450	6	15	0	4	10	0	2	5	0
500	7	10	0	5	0	0	2	10	0
550	8	5	0	5	10	0	2	15	0
600	9	0	0	6	0	0	3	0	0
650	9	15	0	6	10	0	3	5	0
700	10	10	0	7	0	0	3	10	0
750	11	5	0	7	10	0	3	15	0
800	12	0	0	8	0	0	4	0	0
850	12	15	0	8	10	0	4	5	0
900	13	10	0	9	0	0	4	10	0
950	14	5	0	9	10	0	4	15	0
1,000	15	0	0	10	0	0	5	0	0
1,050	15	10	0	10	10	0	5	5	0
1,100	16	0	0	11	0	0	5	10	0
1,150	16	10	0	11	10	0	5	15	0
1,200	17	0	0	12	0	0	6	0	0
1,250	17	10	0	12	10	0	6	5	0
1,300	18	0	0	13	0	0	6	10	0
1,350	18	10	0	13	10	0	6	15	0
1,400	19	0	0	14	0	0	7	0	0
1,450	19	10	0	14	10	0	7	5	0
1,500	20	0	0	15	0	0	7	10	0
1,550	20	10	0	15	10	0	7	15	0

* These charges are inserted to meet the minimum remuneration of £5. *See* Schedule I. Part I., Rule 8.)

TABLE III.—Purchaser's Solicitor (*continued*).

Purchase-money.	Investigating title and preparing and completing conveyance (including perusal and completion of contract if any).			In addition for negotiating a purchase by private contract where no commission is payable to an auctioneer, estate or other agent.			Stamp Duty.		
	Column No. 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
£1,600	21	0	0	16	0	0	8	0	0
1,650	21	10	0	16	10	0	8	5	0
1,700	22	0	0	17	0	0	8	10	0
1,750	22	10	0	17	10	0	8	15	0
1,800	23	0	0	18	0	0	9	0	0
1,850	23	10	0	18	10	0	9	5	0
1,900	24	0	0	19	0	0	9	10	0
1,950	24	10	0	19	10	0	9	15	0
2,000	25	0	0	20	0	0	10	0	0
2,100	26	0	0	21	0	0	10	10	0
2,200	27	0	0	22	0	0	11	0	0
2,250	27	10	0	22	10	0	11	5	0
2,300	28	0	0	23	0	0	11	10	0
2,400	29	0	0	24	0	0	12	0	0
2,500	30	0	0	25	0	0	12	10	0
2,600	31	0	0	26	0	0	13	0	0
2,700	32	0	0	27	0	0	13	10	0
2,750	32	10	0	27	10	0	13	15	0
2,800	33	0	0	28	0	0	14	0	0
2,900	34	0	0	29	0	0	14	10	0
3,000	35	0	0	30	0	0	15	0	0
3,100	35	10	0	30	10	0	15	10	0
3,200	36	0	0	31	0	0	16	0	0
3,250	36	5	0	31	5	0	16	5	0
3,300	36	10	0	31	10	0	16	10	0
3,400	37	0	0	32	0	0	17	0	0
3,500	37	10	0	32	10	0	17	10	0
3,600	38	0	0	33	0	0	18	0	0
3,700	38	10	0	33	10	0	18	10	0
3,750	38	15	0	33	15	0	18	15	0
3,800	39	0	0	34	0	0	19	0	0
3,900	39	10	0	34	10	0	19	10	0
4,000	40	0	0	35	0	0	20	0	0
4,100	40	10	0	35	10	0	20	10	0
4,200	41	0	0	36	0	0	21	0	0
4,300	41	10	0	36	10	0	21	10	0
4,400	42	0	0	37	0	0	22	0	0

TABLE III.—Purchaser's Solicitor (*continued*).

Purchase-money.	Investigating title and preparing and completing conveyance (including perusal and completion of contract if any).			In addition for negotiating a purchase by private contract where no commission is payable to an auctioneer, estate or other agent.			Stamp Duty.		
	Column No. 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
£4,500	42	10	0	37	10	0	22	10	0
4,600	43	0	0	38	0	0	23	0	0
4,700	43	10	0	38	10	0	23	10	0
4,800	44	0	0	39	0	0	24	0	0
4,900	44	10	0	39	10	0	24	10	0
5,000	45	0	0	40	0	0	25	0	0
6,000	50	0	0	45	0	0	30	0	0
7,000	55	0	0	50	0	0	35	0	0
8,000	60	0	0	55	0	0	40	0	0
9,000	65	0	0	60	0	0	45	0	0
10,000	70	0	0	65	0	0	50	0	0
11,000	72	10	0	67	10	0	55	0	0
12,000	75	0	0	70	0	0	60	0	0
13,000	77	10	0	72	10	0	65	0	0
14,000	80	0	0	75	0	0	70	0	0
15,000	82	10	0	77	10	0	75	0	0
20,000	95	0	0	90	0	0	100	0	0
25,000	107	10	0	102	10	0	125	0	0
30,000	120	0	0	115	0	0	150	0	0
35,000	132	10	0	127	10	0	175	0	0
40,000	145	0	0	140	0	0	200	0	0
45,000	157	10	0	152	10	0	225	0	0
50,000	170	0	0	165	0	0	250	0	0
60,000	195	0	0	190	0	0	300	0	0
70,000	220	0	0	215	0	0	350	0	0
80,000	245	0	0	240	0	0	400	0	0
90,000	270	0	0	265	0	0	450	0	0
100,000 and upwards	295	0	0	290	0	0	500 and upwards.	0	0

The remuneration in this Table is calculated in accordance with the scale in Schedule 1, viz.:—

Column No. 1.
- 30s. per £100 for 1st £1,000.
- 20s. ,, 2nd and 3rd £1,000.
- 10s. ,, 4th and each subsequent £1,000 up to £10,000.
- 5s. ,, each subsequent £1,000 to £100,000.

Column No. 2.
- 20s. per £100 up to £3,000.
- 10s. ,, for 4th and each subsequent £1,000 up to £10,000.
- 5s. ,, each subsequent £1,000 up to £100,000.

TABLE IV.

SCALE OF CHARGES

On Mortgage of Freehold, Copyhold or Leasehold Property.

MORTGAGOR'S SOLICITOR.

Amount of Loan.	Deducing title, perusing mortgage and completing.		
	£	s.	d.
Under £100	3	0	0
100	5	0	0
150	5	0	0
200	5	0	0
250	5	0	0
300	5	0	0
350	5	5	0
400	6	0	0
450	6	15	0
500	7	10	0
550	8	5	0
600	9	0	0
650	9	15	0
700	10	10	0
750	11	5	0
800	12	0	0
850	12	15	0
900	13	10	0
950	14	5	0
1,000	15	0	0
1,050	15	10	0
1,100	16	0	0
1,150	16	10	0
1,200	17	0	0
1,250	17	10	0
1,300	18	0	0
1,350	18	10	0
1,400	19	0	0
1,450	19	10	0
1,500	20	0	0
1,550	20	10	0
1,600	21	0	0
1,650	21	10	0
1,700	22	0	0
1,750	22	10	0

TABLE IV.—MORTGAGOR'S SOLICITOR (*continued*).

Amount of Loan.	Deducing title, perusing mortgage, and completing.		
	£	s.	d.
£1,800	23	0	0
1,850	23	10	0
1,900	24	0	0
1,950	24	10	0
2,000	25	0	0
2,100	26	0	0
2,200	27	0	0
2,250	27	10	0
2,300	28	0	0
2,400	29	0	0
2,500	30	0	0
2,600	31	0	0
2,700	32	0	0
2,750	32	10	0
2,800	33	0	0
2,900	34	0	0
3,000	35	0	0
3,100	35	10	0
3,200	36	0	0
3,250	36	5	0
3,300	36	10	0
3,400	37	0	0
3,500	37	10	0
3,600	38	0	0
3,700	38	10	0
3,750	38	15	0
3,800	39	0	0
3,900	39	10	0
4,000	40	0	0
4,100	40	10	0
4,200	41	0	0
4,300	41	10	0
4,400	42	0	0
4,500	42	10	0
4,600	43	0	0
4,700	43	10	0
4,800	44	0	0
4,900	44	10	0
5,000	45	0	0
6,000	50	0	0

TABLE IV.—MORTGAGOR'S SOLICITOR (*continued*).

Amount of Loan.	Deducing title, perusing mortgage, and completing.		
	£	s.	d.
£7,000	55	0	0
8,000	60	0	0
9,000	65	0	0
10,000	70	0	0
11,000	72	10	0
12,000	75	0	0
13,000	77	10	0
14,000	80	0	0
15,000	82	10	0
20,000	95	0	0
25,000	107	10	0
30,000	120	0	0
35,000	132	10	0
40,000	145	0	0
45,000	157	10	0
50,000	170	0	0
60,000	195	0	0
70,000	220	0	0
80,000	245	0	0
90,000	270	0	0
100,000 and upwards	295	0	0

The remuneration in this scale is calculated in accordance with the rates given in Schedule 1, viz.:—

30s. per £100 for 1st £1,000.
20s. ,, 2nd and 3rd £1,000.
10s. ,, 4th and subsequent £1,000 up to £10,000.
5s. ,, each subsequent £1,000 up to £100,000.

TABLE V.

SCALE OF CHARGES

On Mortgage of Freehold, Copyhold or Leasehold Property.

MORTGAGEE'S SOLICITOR.

Amount of Loan.	Investigating title and preparing and completing mortgage.			In addition for negotiating loan where he arranges and obtains the loan from a person for whom he acts.			Stamp Duty		
	Column No. 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
Under £100	3	0	0		—		According to scale.		
100	5	0	0		—	*	0	2	0
150	5	0	0		—	*	0	3	9
200	5	0	0		—	*	0	5	0
250	5	0	0	1	5	0*	0	6	3
300	5	0	0	2	10	0*	0	7	6
350	5	0	0	3	10	0	0	10	0
400	6	0	0	4	0	0	0	10	0
450	6	15	0	4	10	0	0	12	6
500	7	10	0	5	0	0	0	12	6
550	8	5	0	5	10	0	0	15	0
600	9	0	0	6	0	0	0	15	0
650	9	15	0	6	10	0	0	17	6
700	10	10	0	7	0	0	0	17	6
750	11	5	0	7	10	0	1	0	0
800	12	0	0	8	0	0	1	0	0
850	12	15	0	8	10	0	1	2	6
900	13	10	0	9	0	0	1	2	6
950	14	5	0	9	10	0	1	5	0
1,000	15	0	0	10	0	0	1	5	0
1,050	15	10	0	10	10	0	1	7	6
1,100	16	0	0	11	0	0	1	7	6
1,150	16	10	0	11	10	0	1	10	0
1,200	17	0	0	12	0	0	1	10	0
1,250	17	10	0	12	10	0	1	12	6
1,300	18	0	0	13	0	0	1	12	6
1,350	18	10	0	13	10	0	1	15	0
1,400	19	0	0	14	0	0	1	15	0
1,450	19	10	0	14	10	0	1	17	6

* These charges are inserted to meet the minimum remuneration of £5. (See Schedule, Part I., Rule 8.

TABLE V.—MORTGAGEE'S SOLICITOR (*continued*).

Amount of Loan.	Investigating title and preparing and completing mortgage.			In addition for negotiating loan where he arranges and obtains the loan from a person for whom he acts.			Stamp Duty.		
	Column No 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
£1,500	20	0	0	15	0	0	1	17	6
1,550	20	10	0	15	10	0	2	0	0
1,600	21	0	0	16	0	0	2	0	0
1,650	21	10	0	16	10	0	2	2	6
1,700	22	0	0	17	0	0	2	2	6
1,750	22	10	0	17	10	0	2	5	0
1,800	23	0	0	18	0	0	2	5	0
1,850	23	10	0	18	10	0	2	7	6
1,900	24	0	0	19	0	0	2	7	6
1,950	24	10	0	19	10	0	2	10	0
2,000	25	0	0	20	0	0	2	10	0
2,100	26	0	0	21	0	0	2	12	6
2,200	27	0	0	22	0	0	2	15	0
2,250	27	10	0	22	10	0	2	17	6
2,300	28	0	0	23	0	0	2	17	6
2,400	29	0	0	24	0	0	3	0	0
2,500	30	0	0	25	0	0	3	2	6
2,600	31	0	0	26	0	0	3	5	0
2,700	32	0	0	27	0	0	3	7	6
2,750	32	10	0	27	10	0	3	10	0
2,800	33	0	0	28	0	6	3	10	0
2,900	34	0	0	29	0	0	3	12	6
3,000	35	0	0	30	0	0	3	15	0
3,100	35	10	0	30	5	0	3	17	6
3,200	36	0	0	30	10	0	4	0	0
3,250	36	5	0	30	12	6	4	2	6
3,300	36	10	0	30	15	0	4	2	6
3,400	37	0	0	31	0	0	4	5	0
3,500	37	10	0	31	5	0	4	7	6
3,600	38	0	0	31	10	0	4	10	0
3,700	38	10	0	31	15	0	4	12	6
3,750	38	15	0	31	17	6	4	15	0
3,800	39	0	0	32	0	0	4	15	0
3,900	39	10	0	32	5	0	4	17	6
4,000	40	0	0	32	10	0	5	0	0
4,100	40	10	0	32	15	0	5	2	6
4,200	41	0	0	33	0	0	5	5	0
4,300	41	10	0	33	5	0	5	7	6

TABLE V.—Mortgagee's Solicitor (*continued*).

Amount of Loan.	Investigating title and preparing and completing mortgage.			In addition for negotiating loan where he arranges and obtains the loan from a person for whom he acts.			Stamp Duty.		
	Column No. 1.			Column No. 2.					
	£	s.	d.	£	s.	d.	£	s.	d.
£4,400	42	0	0	33	10	0	5	10	0
4,500	42	10	0	33	15	0	5	12	6
4,600	43	0	0	34	0	0	5	15	0
4,700	43	10	0	34	5	0	5	17	6
4,800	44	0	0	34	10	0	6	0	0
4,900	44	10	0	34	15	0	6	2	6
5,000	45	0	0	35	0	0	6	5	0
6,000	50	0	0	37	10	0	7	10	0
7,000	55	0	0	40	0	0	8	15	0
8,000	60	0	0	42	10	0	10	0	0
9,000	65	0	0	45	0	0	11	5	0
10,000	70	0	0	47	10	0	12	10	0
11,000	72	10	0	48	15	0	13	15	0
12,000	75	0	0	50	0	0	15	0	0
13,000	77	10	0	51	5	0	16	5	0
14,000	80	0	0	52	10	0	17	10	0
15,000	82	10	0	53	15	0	18	15	0
20,000	95	0	0	60	0	0	25	0	0
25,000	107	10	0	66	5	0	31	5	0
30,000	120	0	0	72	10	0	37	10	0
35,000	132	10	0	78	15	0	43	10	0
40,000	145	0	0	85	0	0	50	0	0
45,000	157	10	0	91	5	0	56	5	0
50,000	170	0	0	97	10	0	62	10	0
60,000	195	0	0	110	0	0	75	0	0
70,000	220	0	0	122	10	0	87	10	0
80,000	245	0	0	135	0	0	100	0	0
90,000	270	0	0	147	10	0	112	10	0
100,000 & upwards.	295	0	0	160	0	0	125 and upwards.	0	0

The remuneration in this Table is calculated in accordance with the rates given in Schedule 1, viz.:—

Column No. 1 ... ... { 30s. per £100 for 1st £1,000.
20s. ,, 2nd and 3rd £1,000.
10s. ,, 4th and subsequent £1,000 up to £10,000.
5s. ,, each subsequent £1,000 up to £100,000.

Column No. 2 ... ... { 20s. per £100 up to £3,000.
5s. ,, for 4th and each subsequent £1,000 up to £10,000.
2s. 6d. ,, for each subsequent £1,000 up to £100,000.

TABLE VI.

SCALE OF CHARGES

Where Conveyance and Mortgage of Freehold, Copyhold, or Leasehold Property are prepared by the same Solicitor.

Amount of Loan.	To full conveyancing charges upon purchase-money and commission for negotiating (if any) to be taken from Table III., add the following, being one-half mortgagee's solicitor's charges for investigating title and preparing mortgage up to £5,000; and one-fourth over £5,000.		
	£	s.	d.
Under £100	1	10	0
£100	2	10	0
150	2	10	0
200	2	10	0
250	2	10	0
300	2	10	0
350	2	12	6
400	3	0	0
450	3	7	6
500	3	15	0
550	4	2	6
600	4	10	0
650	4	17	6
700	5	5	0
750	5	12	6
800	6	0	0
850	6	7	6
900	6	15	0
950	7	2	6
1,000	7	10	0
1,050	7	15	0
1,100	8	0	0
1,150	8	5	0
1,200	8	10	0
1,250	8	15	0
1,300	9	0	0
1,350	9	5	0
1,400	9	10	0
1,450	9	15	0
1,500	10	0	0
1,550	10	5	0

TABLE VI.—(*continued.*)

Amount of Loan.	To full conveyancing charges upon purchase-money and commission for negotiating (if any) to be taken from Table III., add the following, being one-half mortgagee's solicitor's charges for investigating title and preparing mortgage up to £5,000; and one-fourth over £5,000.		
	£	s.	d.
£1,600	10	10	0
1,650	10	15	0
1,700	11	0	0
1,750	11	5	0
1,800	11	10	0
1,850	11	15	0
1,900	12	0	0
1,950	12	5	0
2,000	12	10	0
2,100	13	0	0
2,200	13	10	0
2,250	13	15	0
2,300	14	0	0
2,400	14	10	0
2,500	15	0	0
2,600	15	10	0
2,700	16	0	0
2,750	16	5	0
2,800	16	10	0
2,900	17	0	0
3,000	17	10	0
3,100	17	15	0
3,200	18	0	0
3,250	18	2	6
3,300	18	5	0
3,400	18	10	0
3,500	18	15	0
3,600	19	0	0
3,700	19	5	0
3,750	19	7	6
3,800	19	10	0
3,900	19	15	0
4,000	20	0	0
4,100	20	5	0
4,200	20	10	0
4,300	20	15	0

TABLE VI.—(*continued.*)

Amount of Loan.	To full conveyancing charges upon purchase-money and commission for negotiating (if any) to be taken from Table III., add the following, being one-half mortgagee's solicitor's charges for investigating title and preparing mortgage up to £5,000; and one-fourth over £5,000.		
	£	s.	d.
£4,400	21	0	0
4,500	21	5	0
4,600	21	10	0
4,700	21	15	0
4,800	22	0	0
4,900	22	5	0
5,000	22	10	0
6,000	23	15	0
7,000	25	0	0
8,000	26	5	0
9,000	27	10	0
10,000	28	15	0
11,000	29	7	6
12,000	30	0	0
13,000	30	12	6
14,000	31	5	0
15,000	31	17	6
20,000	35	0	0
25,000	38	2	6
30,000	41	5	0
35,000	44	7	6
40,000	47	10	0
45,000	50	12	6
50,000	53	15	0
60,000	60	0	0
70,000	66	5	0
80,000	72	10	0
90,000	78	15	0
100,000 and above	85	0	0
	The figures in this column are to be added to the charges the solicitor is entitled to under Table III.		

The charges in this Table are taken from Schedule No. 1, and calculated on the following scale:—

15s. 0d.	per £100 for	1st £1,000.
10s. 0d.	,,	2nd and 3rd £1,000.
5s. 0d.	,,	4th and 5th £1,000.
2s. 6d.	,,	6th and each subsequent £1,000 up to £10,000.
1s. 3d.	,,	each subsequent £1,000 up to £100 000

TABLE VII.

SCALE OF CHARGES.

Where the same Solicitor is concerned for both Mortgagee and Mortgagor.

Amount of Loan.	Solicitor entitled to the following amount, being the mortgagee's solicitor's full charges and one-half the mortgagor's solicitor's charges up to £5,000, and one-fourth the charges above £5,000.		
	£	s.	d.
Under £100	4	10	0
£100	7	10	0
150	7	10	0
200	7	10	0
250	7	10	0
300	7	10	0
350	7	17	6
400	9	0	0
450	10	2	6
500	11	5	0
550	12	7	6
600	13	10	0
650	14	12	6
700	15	15	0
750	16	17	6
800	18	0	0
850	19	2	6
900	20	5	0
950	21	7	6
1,000	22	10	0
1,050	23	5	0
1,100	24	0	0
1,150	24	15	0
1,200	25	10	0
1,250	26	5	0
1,300	27	0	0
1,350	27	15	0
1,400	28	10	0
1,450	29	5	0
1,500	30	0	0
1,550	30	15	0
1,600	31	10	0

TABLE VII.—(*continued.*)

Amount of Loan.	Solicitor entitled to the following amount, being the mortgagee's solicitor's full charges and one-half the mortgagor's solicitor's charges up to £5,000, and one-fourth the charges above £5,000.		
	£	s.	d.
£1,650	32	5	0
1,700	33	0	0
1,750	33	15	0
1,800	34	10	0
1,850	35	5	0
1,900	36	0	0
1,950	36	15	0
2,000	37	10	0
2,100	39	0	0
2,200	40	10	0
2,250	41	5	0
2,300	42	0	0
2,400	43	10	0
2,500	45	0	0
2,600	46	10	0
2,700	48	0	0
2,750	48	15	0
2,800	49	10	0
2,900	51	0	0
3,000	52	10	0
3,100	53	5	0
3,200	54	0	0
3,250	54	7	6
3,300	54	15	0
3,400	55	10	0
3,500	56	5	0
3,600	57	0	0
3,700	57	15	0
3,750	58	2	6
3,800	58	10	0
3,900	59	5	0
4,000	60	0	0
4,100	60	15	0
4,200	61	10	0
4,300	62	5	0
4,400	63	0	0

TABLE VII.—(*continued.*)

Amount of Loan.	Solicitor entitled to the following amount, being the mortgagee's solicitor's full charges and one-half the mortgagor's solicitor's charges up to £5,000, and one-fourth the charges above £5,000.		
	£	s.	d.
£4,500	63	15	0
4,600	64	10	0
4,700	65	5	0
4,800	66	0	0
4,900	66	15	0
5,000	67	10	0
6,000	73	15	0
7,000	80	0	0
8,000	86	5	0
9,000	92	10	0
10,000	98	15	0
11,000	101	17	6
12,000	105	0	0
13,000	108	2	6
14,000	111	5	0
15,000	114	7	6
20,000	130	0	0
25,000	145	12	6
30,000	161	5	0
35,000	176	17	6
40,000	192	10	0
45,000	208	2	6
50,000	223	15	0
60,000	255	0	0
70,000	286	5	0
80,000	317	10	0
90,000	348	15	0
100,000 and above	380	0	0

The remuneration in this Table is calculated in accordance with the scale in Schedule No. 1, being the full amount of the mortgagee's solicitor's charges, viz. :—

£1 10s. 0d. per £100 for 1st £1,000.
£1 0s. 0d. ,, 2nd and 3rd £1,000.
10s. 0d. ,, 4th and each subsequent £1,000 up to £10,000.
5s. 0d. ,, each subsequent £1,000 up to £100,000.

And the following proportion of mortgagor's solicitor's charges, viz.:—
£0 15s. 0d. for £100 for 1st £1,000.
10s. 0d. ,, 2nd and 3rd £1,000.
5s. 0d. ,, 4th and 5th £1,000.
2s. 6d. ,, each subsequent £1,000 up to £10,000.
1s. 3d. ,, ,, ,, ,, £100,000.

NOTE.—The charge for negotiation is not included, but is to be added if solicitor arranges loan.

TABLE VIII.

SCALE OF CHARGES

For Leases or Agreements for Leases at Rack Rent (other than a Mining Lease), or a Lease for Building Purposes, or Agreement for the same.

LESSOR'S AND LESSEE'S SOLICITOR.

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)	Lessee's solicitor for perusing draft and completing, one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium. (Table III.)	A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges and one-half of that of the lessee's solicitor.	Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Any rental up to £66 13 4	5 0 0	2 10 0	6 5 0	according to scale
£70	5 5 0	2 12 6	6 11 3	0 7 6
75	5 12 6	2 16 3	7 0 8	
80	6 0 0	3 0 0	7 10 0	0 10 0
85	6 7 6	3 3 9	7 19 5	
90	6 15 6	3 7 6	8 8 9	
95	7 2 6	3 11 3	8 18 2	
100	7 10 0	3 15 0	9 7 6	
105	7 12 6	3 16 3	9 10 8	0 15 0
110	7 15 0	3 17 6	9 13 9	
115	7 17 6	3 18 9	9 16 11	
120	8 0 0	4 0 0	10 0 0	
125	8 2 6	4 1 3	10 3 2	
130	8 5 0	4 2 6	10 6 3	
135	8 7 6	4 3 9	10 9 5	
140	8 10 0	4 5 0	10 12 6	
145	8 12 6	4 6 3	10 15 8	
150	8 15 0	4 7 6	10 18 9	
155	8 17 6	4 8 9	11 1 11	1 0 0
160	9 0 0	4 10 0	11 5 0	

TABLE VIII.—Lessor's and Lessee's Solicitor (*continued*).

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)			Lessee's solicitor for perusing draft and completing one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium. (Table III.)			A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges and one-half of that of the lessee's solicitor.			Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£165	9	2	6	4	11	3	11	8	2			
170	9	5	0	4	12	6	11	11	3			
175	9	7	6	4	13	9	11	14	5			
180	9	10	0	4	15	0	11	17	6			
185	9	12	6	4	16	3	12	0	8	1	0	0
190	9	15	0	4	17	6	12	3	9			
195	9	17	6	4	18	9	12	6	11			
200	10	0	0	5	0	0	12	10	0			
205	10	2	6	5	1	3	12	13	2			
210	10	5	0	5	2	6	12	16	3			
215	10	7	6	5	3	9	12	19	5			
220	10	10	0	5	5	0	13	2	6			
225	10	12	6	5	6	3	13	5	8			
230	10	15	0	5	7	6	13	8	9	1	5	0
235	10	17	6	5	8	9	13	11	11			
240	11	0	0	5	10	0	13	15	0			
245	11	2	6	5	11	3	13	18	2			
250	11	5	0	5	12	6	14	1	3			
255	11	7	6	5	13	9	14	4	5			
260	11	10	0	5	15	0	14	7	6			
265	11	12	6	5	16	3	14	10	8			
270	11	15	0	5	17	6	14	13	9			
275	11	17	6	5	18	9	14	16	11			
280	12	0	0	6	0	0	15	0	0	1	10	0
285	12	2	6	6	1	3	15	3	2			
290	12	5	0	6	2	6	15	6	3			
295	12	7	6	6	3	9	15	9	5			
300	12	10	0	6	5	0	15	12	6			

TABLE VIII.—Lessor's and Lessee's Solicitor (*continued*).

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)			Lessee's solicitor for perusing draft and completing, one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium. (Table III.)			A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges, and one-half of that of the lessee's solicitor.			Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.		
	£.	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£310	12	15	0	6	7	6	15	18	9			
320	13	0	0	6	10	0	16	5	0			
325	13	2	6	6	11	3	16	8	2	1	15	0
330	13	5	0	6	12	6	16	11	3			
340	13	10	0	6	15	0	16	17	6			
350	13	15	0	6	17	6	17	3	9			
360	14	0	0	7	0	0	17	10	0			
370	14	5	0	7	2	6	17	16	3			
375	14	7	6	7	3	9	17	19	5	2	0	0
380	14	10	0	7	5	0	18	2	6			
390	14	15	0	7	7	6	18	8	9			
400	15	0	0	7	10	0	18	15	0			
410	15	5	0	7	12	6	19	1	3			
420	15	10	0	7	15	0	19	7	6			
425	15	12	6	7	16	3	19	10	8	2	5	0
430	15	15	0	7	17	6	19	13	9			
440	16	0	0	8	0	0	20	0	0			
450	16	5	0	8	2	6	20	6	3			
460	16	10	0	8	5	0	20	12	6			
470	16	15	0	8	7	6	20	18	9			
475	16	17	6	8	8	9	21	1	11	2	10	0
480	17	0	0	8	10	0	21	5	0			
490	17	5	0	8	12	6	21	11	3			
500	17	10	0	8	15	0	21	17	6			
510	17	12	0	8	16	0	22	0	0			
520	17	14	0	8	17	0	22	2	6	2	15	0
525	17	15	0	8	17	6	22	3	9			

TABLE VIII.—Lessor's and Lessee's Solicitor (*continued*).

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)			Lessee's solicitor for perusing draft and completing, one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.).			A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges and one-half of that of the lessee's solicitor.			Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£530	17	16	0	8	18	0	22	5	0			
540	17	18	0	8	19	0	22	7	6	2	15	0
550	18	0	0	9	0	0	22	10	0			
560	18	2	0	9	1	0	22	12	6			
570	18	4	0	9	2	0	22	15	0			
575	18	5	0	9	2	6	22	16	9			
580	18	6	0	9	3	0	22	17	6	3	0	0
590	18	8	0	9	4	0	23	0	0			
600	18	10	0	9	5	0	23	2	6			
610	18	12	0	9	6	0	23	5	0			
620	18	14	0	9	7	0	23	7	6			
625	18	15	0	9	7	6	23	8	9			
630	18	16	0	9	8	0	23	10	0	3	5	0
640	18	18	0	9	9	0	23	12	6			
650	19	0	0	9	10	0	23	15	0			
660	19	2	0	9	11	0	23	17	6			
670	19	4	0	9	12	0	24	0	0			
675	19	5	0	9	12	6	24	1	3			
680	19	6	0	9	13	0	24	2	6	3	10	0
690	19	8	0	9	14	0	24	5	0			
700	19	10	0	9	15	0	24	7	6			
710	19	12	0	9	16	0	24	10	0			
720	19	14	0	9	17	0	24	12	6			
725	19	15	0	2	17	6	24	13	9			
730	19	16	0	9	18	0	24	15	0	3	15	0
740	19	18	0	9	19	0	24	17	6			
750	20	0	0	10	0	0	25	0	0			

TABLE VIII.—Lessor's and Lessee's Solicitor (*continued*).

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)			Lessee's solicitor for perusing draft and completing, one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.)			A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges and one-half of that of the lessee's solicitor.			Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£760	20	2	0	10	1	0	25	2	6			
770	20	4	0	10	2	0	25	5	0			
775	20	5	0	10	2	6	25	6	9			
780	20	6	0	10	3	0	25	7	6	4	0	0
790	20	8	0	10	4	0	25	10	0			
800	20	10	0	10	5	0	25	12	6			
810	20	12	0	10	6	0	25	15	0			
820	20	14	0	10	7	0	25	17	6			
825	20	15	0	10	7	6	25	18	9			
830	20	16	0	10	8	0	26	0	0	4	5	0
840	20	18	0	10	9	0	26	2	6			
850	21	0	0	10	10	0	26	5	0			
875	21	5	0	10	12	6	26	11	3			
900	21	10	0	10	15	0	26	17	6	4	10	0
925	21	15	0	10	17	6	27	3	9			
950	22	0	0	11	0	0	27	10	0	4	15	0
1,000	22	10	0	11	5	0	28	2	6	5	0	0
1,050	23	0	0	11	10	0	28	15	0	5	5	0
1,100	23	10	0	11	15	0	29	7	6	5	10	0
1,150	24	0	0	12	0	0	30	0	0	5	15	0
1,200	24	10	0	12	5	0	30	12	6	6	0	0
1,250	25	0	0	12	10	0	31	5	0	6	5	0
1,300	25	10	0	12	15	0	31	17	6	6	10	0
1,350	26	0	0	13	0	0	32	10	0	6	15	0
1,400	26	10	0	13	5	0	33	2	6	7	0	0
1,450	27	0	0	13	10	0	33	15	0	7	5	0
1,500	27	10	0	13	15	0	34	7	6	7	10	0

TABLE VIII.—Lessor's and Lessee's Solicitor (*continued*).

Amount of Rent.	Lessor's solicitor preparing, settling and completing lease and counterpart. Where leave is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium. (Table I.)			Lessee's solicitor for perusing draft and completing, one-half the amount payable to the lessor's solicitor. Where lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.).			A solicitor acting for both lessor and lessee, entitled to the full lessor's solicitor's charges and one-half of that of the lessee's solicitor.			Stamp Duty. The Stamp Duty in this column is calculated on a term not exceeding 35 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£1,600	28	10	0	14	5	0	35	12	6	8	0	0
1,700	29	10	0	14	15	0	36	17	6	8	10	0
1,800	30	10	0	15	5	0	38	2	6	9	0	0
1,900	31	10	0	15	15	0	39	7	6	9	10	0
2,000	32	10	0	16	5	0	40	12	6	10	0	0
2,100	33	10	0	16	15	0	41	17	6	10	10	0
2,200	34	10	0	17	5	0	43	2	6	11	0	0
2,300	35	10	0	17	15	0	44	7	6	11	10	0
2,400	36	10	0	18	5	0	45	12	6	12	0	0
2,500	37	10	0	18	15	0	46	17	6	12	10	0
2,600	38	10	0	19	5	0	48	2	6	13	0	0
2,700	39	10	0	19	15	0	49	7	6	13	10	0
2,800	40	10	0	20	5	0	50	12	6	14	0	0
2,900	41	10	0	20	15	0	51	17	6	14	10	0
3,000	42	10	0	21	5	0	53	2	6	15	0	0

The charges are taken from Schedule No. 1, Part II., and calculated from the following scale:—

Where the rent does not exceed £100.	£7 10s. per cent. on the rental but not less, in any case, than £5.
Where the rent exceeds £100 and does not exceed £500.	£7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each subsequent £100 of rent.
Where the rent exceeds £500.	£7 10s. in respect of the first £100 of rent, £2 10s. in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100.

TABLE IX.

SCALE OF CHARGES

As to Conveyances in Fee reserving Rent, or Building Leases reserving Rent, or other long Leases not at Rack Rent (except Mining Leases), or Agreements for the same respectively.

VENDOR'S, LESSOR'S, PURCHASER'S OR LESSEE'S SOLICITOR.

Amount of Rent.	Vendor's or lessor's solicitor for preparing, settling and completing conveyance and duplicate or lease and counterpart. Where conveyance or lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium (Table I).			Purchaser's or lessee's solicitor for perusing draft and completing. One half of the amount payable to the vendor's or lessor's solicitor. Where conveyance or lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III).			A solicitor acting for both vendor and purchaser, or lessor and lessee. The vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessee's solicitor.			Stamp Duty. Where a lease is granted partly in consideration of a premium, add stamp duty as on a purchase at a sum equal to the premium (*see* Table III.) The stamp duty in this column is calculated on a term exceeding 35 years, but not exceeding 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£5 or Under	5	0	0	2	10	0	6	5	0	0	3	0
£10	6	0	0	3	0	0	7	10	0	0	6	0
15	7	0	0	3	10	0	8	15	0	0	9	0
20	8	0	0	4	0	0	10	0	0	0	12	0
25	9	0	0	4	10	0	11	5	0	0	15	0
30	10	0	0	5	0	0	12	10	0			
35	11	0	0	5	10	0	13	15	0			
40	12	0	0	6	0	0	15	0	0	1	10	0
45	13	0	0	6	10	0	16	5	0			
50	14	0	0	7	0	0	17	10	0			
55	14	10	0	7	5	0	18	2	6			
60	15	0	0	7	10	0	18	15	0			
65	15	10	0	7	15	0	19	7	6	2	5	0
70	16	0	0	8	0	0	20	0	0			
75	16	10	0	8	5	0	20	12	6			
80	17	0	0	8	10	0	21	5	0			
85	17	10	0	8	15	0	21	17	6			
90	18	0	0	9	0	0	22	10	0	3	0	0
95	18	10	0	9	5	0	23	2	6			
100	19	0	0	9	10	0	23	15	0			
105	19	10	0	9	15	0	24	7	6			
110	20	0	0	10	0	0	25	0	0	4	10	0
115	20	10	0	10	5	0	25	12	6			

TABLE IX.

VENDOR'S, LESSOR'S, PURCHASER'S OR LESSEE'S SOLICITOR (*continued*).

Amount of Rent.	Vendor's or lessor's solicitor for preparing, settling and completing conveyance and duplicate or lease and counterpart. Where conveyance or lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium (Table I).	Purchaser's or lessee's solicitor for perusing draft and completing. One-half of the amount payable to the vendor's or lessor's solicitor. Where conveyance or lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.)	A solicitor acting for both vendor and purchaser or lessor and lessee. The vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessee's solicitor.	Stamp Duty. Where a lease is granted partly in consideration of a premium, add stamp duty as on a purchase at a sum equal to the premium (*see* Table III.) The stamp duty in this column is calculated on a term exceeding 35 years, but not exceeding 100 years.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
£120	21 0 0	10 10 0	26 5 0	
125	21 10 0	10 15 0	26 17 6	
130	22 0 0	11 0 0	27 10 0	
135	22 10 0	11 5 0	28 2 6	4 10 0
140	23 0 0	11 10 0	28 15 0	
145	23 10 0	11 15 0	29 7 6	
150	24 0 0	12 0 0	30 0 0	
155	24 5 0	12 2 6	30 6 3	
160	24 10 0	12 5 0	30 12 6	
165	24 15 0	12 7 6	30 18 9	
170	25 0 0	12 10 0	31 5 0	
175	25 5 0	12 12 6	31 11 3	
180	25 10 0	12 15 0	31 17 6	6 0 0
185	25 15 0	12 17 6	32 3 9	
190	26 0 0	13 0 0	32 10 0	
195	26 5 0	13 2 6	32 16 3	
200	26 10 0	13 5 0	33 2 6	
210	27 0 0	13 10 0	33 15 0	
220	27 10 0	13 15 0	34 7 6	
225	27 15 0	13 17 6	34 13 9	
230	28 0 0	14 0 0	35 0 0	7 10 0
240	28 10 0	14 5 0	35 12 6	
250	29 0 0	14 10 0	36 5 0	
260	29 10 0	14 15 0	36 17 6	
270	30 0 0	15 0 0	37 10 0	
275	30 5 0	15 2 6	37 16 3	
280	30 10 0	15 5 0	38 2 6	9 0 0
290	31 0 0	15 10 0	38 15 0	
300	31 10 0	15 15 0	39 7 6	

TABLE IX.

VENDOR'S, LESSOR'S, PURCHASER'S OR LESSEE'S SOLICITOR (*continued*).

Amount of Rent.	Vendor's or lessor's solicitor for preparing, settling and completing conveyance and duplicate or lease and counterpart. Where conveyance or lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium (Table I.)	Purchaser's or lessee's solicitor for perusing draft and completing. One-half of the amount payable to the vendor's or lessor's solicitor. Where conveyance or lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.)	A solicitor acting for both vendor and purchaser, or lessor and lessee. The vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessees's solicitor.	Stamp Duty. Where a lease is granted partly in consideration of a premium, add stamp duty as on a purchase at a sum equal to the premium (*see* Table III.) The stamp duty in this column is calculated on a term exceeding 35 years, but not exceeding 100 years.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
£310	32 0 0	16 0 0	40 0 0	
320	32 10 0	16 5 0	40 12 6	
330	33 0 0	16 10 0	41 5 0	10 10 0
340	33 10 0	16 15 0	41 17 6	
350	34 0 0	17 0 0	42 10 0	
360	34 10 0	17 5 0	43 2 6	
370	35 0 0	17 10 0	43 15 0	
380	35 10 0	17 15 0	44 7 6	12 0 0
390	36 0 0	18 0 0	45 0 0	
400	36 10 0	18 5 0	45 12 6	
410	37 0 0	18 10 0	46 5 0	
420	37 10 0	18 15 0	46 17 6	13 10 0
430	38 0 0	19 0 0	47 10 0	
440	38 10 0	19 5 0	48 2 6	
450	39 0 0	19 10 0	48 15 0	
460	39 10 0	19 15 0	49 7 6	
470	40 0 0	20 0 0	50 0 0	15 0 0
480	40 10 0	20 5 0	50 12 6	
490	41 0 0	20 10 0	51 5 0	
500	41 10 0	20 15 0	51 17 6	
525	42 15 0	21 7 6	53 8 9	16 10 0
550	44 0 0	22 0 0	55 0 0	
575	45 5 0	22 12 6	56 11 3	18 0 0
600	46 10 0	23 5 0	58 2 6	
625	47 15 0	23 17 6	59 13 9	19 10 0
650	49 0 0	24 10 0	61 5 0	
675	50 5 0	25 2 6	62 16 3	21 0 0
700	51 10 0	26 15 0	64 7 6	
[illegible]	54 0 0	27 0 0	67 10 0	22 10 0

TABLE IX.

VENDOR'S, LESSOR'S, PURCHASER'S OR LESSEE'S SOLICITOR (*continued*).

Amount of Rent.	Vendor's or lessor's solicitor for preparing, settling and completing conveyance and duplicate or lease and counterpart. Where conveyance or lease is partly in consideration of a premium add a vendor's solicitor's charges on a sale at a sum equal to the premium (Table I.).			Purchaser's or lessee's solicitor for perusing draft and completing. One-half of the amount payable to the vendor's or lessor's solicitor. Where conveyance or lease is partly in consideration of a premium add a purchaser's solicitor's charges on a purchase at a sum equal to the premium (Table III.).			A solicitor acting for both vendor and purchaser, or lessor and lessee. The vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessee's solicitor.			Stamp Duty. Where a lease is granted partly in consideration of a premium, add stamp duty as on a purchase at a sum equal to the premium (*see* Table III.). The stamp duty in this column is calculated on a term exceeding 35 years, but not exceeding 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
£800	56	10	0	28	5	0	70	12	6	24	0	0
850	59	0	0	29	10	0	73	15	0	25	10	0
900	61	10	0	30	15	0	76	17	6	27	0	0
950	64	0	0	32	0	0	80	0	0	28	10	0
1,000	66	10	0	33	5	0	83	2	6	30	0	0
1,100	71	10	0	35	15	0	89	7	6	33	0	0
1,200	76	10	0	38	5	0	95	12	6	36	0	0
1,300	81	10	0	40	15	0	101	17	6	39	0	0
1,400	86	10	0	43	5	0	108	2	6	42	0	0
1,500	91	10	0	45	15	0	114	7	6	45	0	0
1,600	96	10	0	48	5	0	120	12	6	48	0	0
1,700	101	10	0	50	15	0	126	17	6	51	0	0
1,800	106	10	0	53	5	0	133	2	6	54	0	0
1,900	111	10	0	55	15	0	139	7	6	57	0	0
2,000	116	10	0	58	5	0	145	12	6	60	0	0

The charges are taken from Schedule No. 1, Part II., and calculated from the following scale:—

Where rent does not exceed £5 ... ...£5.

Exceeding £5 and not exceeding ... £50 { Same remuneration as on a rent of £5, and also 20 per cent. on the excess beyond £5.

Exceeding £50 and not exceeding... £150 { Same as on a rent of £50, and 10 per cent. on the excess beyond £50.

Exceeding ... ... £150 { Same as on a rent of £150, and 5 per cent. on the excess beyond £150.

CONVEYANCING PRECEDENTS AND FORMS.

No. 1.

Conditions of Sale.

FREEHOLDS.

1.—No person shall at any bidding advance less than £ , except with the consent of the auctioneer, and no bidding shall be retracted. The highest bidder shall be the purchaser, and if any dispute arise concerning a bidding, the property shall be put up again and resold. The vendor reserves the right of bidding by himself or his agent.

2.—The purchaser shall immediately after the sale pay a deposit of £ per cent. of his purchase-money into the hands of the auctioneer, and sign the subjoined agreement.

3.—The purchaser shall pay the remainder of his purchase-money on the day of 18 , at the office of the vendor's solicitor, at which time and place the purchase is to be completed. All outgoings up to that time will be discharged by the vendor, and from that day the outgoings shall be paid by the purchaser, such outgoings to be apportioned, if necessary for the purpose of this condition; and if, from any cause whatever, the completion of the purchase shall be delayed beyond the said day of and the sale shall not be annulled, the residue of the purchase-money shall carry interest at the rate of £5 per cent. per annum from that day until the day of actual payment.

4.—The vendor shall deliver to the purchaser or his solicitor an abstract of his title, commencing with an indenture of conveyance, dated the day of 18 . (*a*) The purchaser shall admit

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(*a*) The usual stipulation that the purchaser shall not be entitled to call for, or investigate, or make any objection or requisition in respect of the earlier title,

the identity of the property purchased by him with that comprised in the muniments offered by the vendor as the title to such property, upon the evidence afforded by a comparison of the description in the particulars and muniments.

5.—The purchaser shall, within seven days after the delivery of the abstract, state in writing and submit to the solicitor of the vendor all his objections to and requisitions as to the title shown by the abstract, particulars or conditions, and in case no such statement shall be delivered within such time, the purchaser shall be considered to have approved of and accepted the title, and in case of any such statement being so delivered he shall be considered to have approved of and accepted the title, except as mentioned in such statement; and any answer to any statement of objections to or requisitions as to the title shall, within four days from the delivery of such answer, be replied to by a statement in writing transmitted as aforesaid, and any such answer not so replied to within such time shall be considered satisfactory, and time shall, in all respects, be deemed as of the essence of this condition. In case the purchaser shall take any objection or make any requisition whatsoever, and the vendor shall be unable or unwilling to remove or comply therewith, the vendor shall be at liberty, by notice in writing delivered to the purchaser or his solicitor at any time, and notwithstanding any answer to or negotiations as to any objections or requisitions, or the pendency of any litigation, to annul and put an end to the contract for sale, and in such case the vendor shall, after the delivery of such notice, repay to the purchaser or his solicitor, within one week after demand, his deposit money, which shall be taken in satisfaction of all claims on any account whatsoever.

6.—The conveyance of the property shall be prepared by and at the expense of the purchaser, and the engrossment thereof shall be delivered at the office of the vendor's solicitor on or before the

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is not now necessary (*see* sec. 3, sub-sec. 3); and for the same reason the stipulation that the purchaser shall bear the expense of the production and obtaining abstracts or copies of all deeds and documents, and of all certificates, declarations and information not in the vendor's possession, is omitted. (*See* sec. 3, sub-sec. 6.)

day of , 18 , for execution by the vendor. No objection shall be made on the ground of any document not being stamped, or insufficiently stamped, or of any document not being registered.

7.—The property is presumed to be correctly described in the particulars, and no error, misdescription, or omission in the particulars, shall annul the sale, and no compensation shall be required for any such error, misdescription, or otherwise.

LASTLY.—If the purchaser shall neglect or fail to comply with the above conditions, his deposit-money shall be thereupon actually forfeited to the vendor, who shall be at liberty, with or without notice, to resell the premises, either by public auction or private contract, at such time and place, and subject to such conditions, and in such manner as the vendor shall think fit; and the deficiency in price (if any) which shall happen on such second sale, and all expenses attending the same, shall be made good and paid to the vendor by the defaulter at this present sale, and in case of non-payment the whole or such part of the same as shall not be paid shall be recoverable by the vendor as and for liquidated damages, and on every such resale by auction the premises may be bought in, and all expenses of and attending an unsuccessful attempt to sell may be immediately thereupon recovered from the defaulter at this sale, and no purchaser at a subsequent sale shall be concerned to inquire into the propriety of the sale to him, or be affected by notice to the contrary.

No. 2.

Conditions of Sale.

COPYHOLDS.

1.—No person shall at any bidding advance less than £ , and no bidding shall be retracted. Subject to a reserved price, which has been fixed upon the property before sale, the highest bidder shall be the purchaser; and if any dispute arise respecting a bidding, the property shall, at the vendor's option, either be withdrawn from sale or be put up again and resold.

2.—The purchaser shall immediately after the sale pay a deposit

of £ per cent. of his purchase-money into the hands of the auctioneers, and sign the subjoined agreement.

3.—The title shall commence with an abstract of the surrender, dated the of 18 , of the property, and other adjoining property, to , and of his admittance thereto. The purchaser shall assume (what the vendor has no reason to doubt) that all the recitals in the said abstracted copy are correct, nor shall he require the vendor to produce or procure a steward's or other copy of the said surrender and admittance.

4.—The vendor, , is selling as the sole acting trustee of the late , who died on the day of , , and who by his will directed his property to be sold within 12 months after his death, and appointed the vendor and two other persons his executors, but did not devise his estate to them as trustees. The purchaser shall not object to the title on the ground that the executors of the will have delayed the sale of the property until the present time. (*a*)

5.—The purchaser shall admit the identity of the property purchased with that comprised in the muniments offered by the vendor as the title to such property, upon the evidence afforded by a comparison of the descriptions in the particular and muniments.

6.—The property is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief and other rents and incidents of tenure, rights of way and water, and other easements (if any) charged or subsisting thereon; and if any error, mis-statement or omission in the particular be discovered, the same shall not annul the sale, nor shall any compensation be allowed either by the vendor or purchaser in respect thereof.

7.—The purchaser shall pay the remainder of his purchase-money on the day of next at the office of the vendor's solicitors, and upon such payment the vendor and all other necessary parties (if any) will execute a proper surrender and assurance of the premises to the purchaser, but such surrender and every other assurance and act

(*a*.) This condition is a special one, and should be struck out if not applicable.

(if any) which shall be required by the purchaser for getting in, surrendering or releasing any outstanding estate, right, title or interest, or for completing or perfecting the vendor's title, or for any other purpose, shall be prepared, made and done by and at the expense of the purchaser, and every such assurance shall be left not less than 10 days before the said day of next at the office aforesaid, and the expense of the perusal on behalf of and execution by all parties (other than the vendor) of all such assurances as aforesaid shall be borne by the purchaser. The vendor being a trustee, will convey as a trustee (*a*), nor shall the concurrence of the beneficiaries be required.

8.—The rents or possession will be received or retained and the outgoings discharged by the vendor up to the said day of next, and as from that day the outgoings shall be discharged and the rents or possession taken by the purchaser, and such rents and outgoings shall, if necessary, be apportioned between the vendor and purchaser for the purpose of this condition. If from any cause whatever the purchase shall not be completed on the said day of next, the purchaser shall pay interest on the remainder of his purchase-money at the rate of £5 per cent. per annum until the purchase shall be completed, and shall not be entitled to any compensation for the vendor's delay or otherwise.

9.—The purchaser shall send his objections and requisitions (if any) in respect of the title, and all matters appearing on the abstract, particular, or conditions, to the office aforesaid within fourteen days from the day of the delivery of his abstract, and in this respect time shall be of the essence of the contract; and in default of such objections and requisitions (if none), and subject only to such (if any), shall be deemed to have accepted the title. And if he shall insist on any objection or requisition as to the title or abstract, or evidence of title, particular, conditions, or otherwise, which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by notice in writing to be given to the purchaser or his solicitor at any time, and

(*a*) The only covenant implied against a person expressed to convey as a trustee is the covenant against incumbrances. (Sec. 7, sub-sec. 1.)

notwithstanding any intermediate or pending negotiation or litigation in respect of such objection or requisition, or any attempt to remove or comply with the same, annul the sale, and shall thereupon return to the purchaser his deposit, but without any interest, costs of investigating the title, or other compensation or payment whatever.

10.—If the purchaser shall fail to comply with the above conditions, his deposit shall thereupon be forfeited, and the vendor shall be at liberty to resell the property at such time, in such manner, and subject to such conditions as he shall think fit; and any deficiency in price which may happen on, and all expenses attending the resale, shall immediately afterwards be paid by the defaulter to the vendor, and in case of nonpayment shall be recoverable by the vendor as liquidated damages.

No. 3.

Conditions of Sale.

LEASEHOLDS.

1.—No person shall advance less than £ at any bidding, and no bidding shall be retracted. Subject to the right the vendor hereby reserves to bid by his agent or agents as often as he pleases, the highest bidder shall be the purchaser; and if any dispute arise respecting a bidding, the property shall be put up again and re-sold.

2.—The purchaser shall immediately after the sale pay a deposit of £ per cent. of his purchase-money into the hands of the auctioneer, and sign the subjoined agreement.

3.—The title shall commence with the lease dated the day of , 18 , under which the vendor holds (*a*), and the production of a receipt for the last payment of rent accrued previously to the completion of the purchase shall be conclusive evidence that all the covenants and conditions in the lease have been performed and observed up to the completion of the purchase (*b*). The nature of these covenants

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(*a*) *See* note (*a*) to Precedent No. 1, *ante*, p. 247.

(*b*) The stipulation that the last receipt is to be taken as conclusive evidence is desirable, as the Act provides that such receipt is sufficient "unless the contrary appears." (Sec. 3, sub-secs. 4 and 5.)

and conditions may be ascertained from a copy thereof which will be produced at the sale, and the purchaser shall be taken to have purchased with full knowledge thereof.

4.—The purchaser shall admit the identity of the property purchased with that comprised in the muniments offered by the vendor as the title to such property, upon the evidence afforded by a comparison of the descriptions in the particulars and muniments. The expense of stamping any deed or other document unstamped or insufficiently stamped, or of registering any unregistered deed, shall be borne by the purchaser.

5.—The property is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all rights of way and water and other easements (if any) charged or subsisting thereon; and if any error, mis-statement, or omission in the particular be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendor in respect thereof.

6.—The purchaser shall pay the remainder of his purchase-money on the day of 18 , at the office of solicitor to the vendor , and upon such payment the vendor will execute a proper assurance of the property to the purchaser, but such assurance and every other assurance and act (if any) which shall be required by the purchaser for getting in, surrendering, or realising any outstanding estate, right, title, or interest, or completing or perfecting the vendor's title, or for any other purpose, shall be prepared, made and done by and at the expense of the purchaser.

7.—The vendor will pay the ground rent and all outgoings to the said day of next, from which day the purchaser will pay the same, and such rent and outgoings shall be apportioned between the vendor and purchaser for the purpose of this condition. If, from any cause whatever, the purchase shall not be completed on the said day of next, the purchaser shall pay interest on the remainder of his purchase-money at the rate of £ per cent. per annum from that day until the purchase shall be completed.

8.—The purchaser shall send his objections and requisitions (if any) in respect of the title and of all matters appearing on the abstract,

particular or conditions, to the office aforesaid of the vendor's solicitor, within seven days from the day of the delivery of the abstract, and in this respect time shall be of the essence of the contract, and in default of such objections and requisitions (if none), and subject only to such (if any), shall be deemed to have accepted the title; and if the purchaser shall insist on any objection or requisition as to the title or abstract, or evidence of title, particular, or conditions, conveyance, possession, receipt of rent, or otherwise, which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by notice in writing to be given to the purchaser or his solicitor, at any time, and notwithstanding any negotiation or litigation in respect of such objection or requisition, annul the sale, and shall thereupon return to the purchaser his deposit, but without any interest, costs of investigating the title, or other compensation or payment whatever.

Lastly.—If the purchaser shall fail to comply with the above conditions or any of them, his deposit shall thereupon be forfeited to the vendor, and the vendor shall be at liberty to resell the property, either by public auction or private contract, at such time and in such manner, and subject to such conditions as he shall think fit; and the deficiency in price (if any) which may happen on, and all expense attending such second sale, shall immediately afterwards be paid by the defaulter to the vendor, and in case of non-payment shall be recoverable by the vendor as liquidated damages, and it shall not be necessary for the vendor to tender an assignment.

No. 4.

Conditions of Sale.

Freeholds and Leaseholds.

1.—The highest bidder for each lot shall be the purchaser of it, and no person shall advance less than £ at each bidding, or retract his bidding; and if any dispute shall arise respecting a bidding, the lot shall be immediately put up again and resold. Each lot is offered subject to a reserved price, and the vendors also reserve the right of bidding by themselves or their agent.

2.—Each purchaser shall immediately after the sale pay a deposit of £ per cent. on the amount and in part payment of his purchase-money, into the hands of the auctioneer, and shall sign an agreement for the payment of the remainder of his purchase-money at the office of , the vendors' solicitor, , on the day of , 18 , where and when each purchase shall be completed. All outgoings in respect of each lot will be paid or allowed for by the vendors up to the day of , 18 , but all subsequent outgoings shall be borne by the purchaser of it, and such purchaser shall be entitled to possession or the receipt of the rents and profits of the premises purchased by him as from the said day of , 18 ; and if necessary for the purposes of this condition, such rents and profits shall be apportioned by the vendors' solicitor, whose apportionment shall be final. Should the completion of the purchase of any lot be delayed beyond the said day of , 18 , from any cause whatsoever, the purchaser thereof shall pay interest at the rate of £ per cent. per annum on his unpaid purchase-money from that day up to the day of the actual completion of his purchase; but this condition is without prejudice to the right reserved to the vendors by the last condition.

3.—An abstract of the vendors' title, in conformity with these conditions, shall be delivered to each purchaser or his solicitor, and each purchaser shall, within ten days after the delivery of the abstract to him or his solicitor, deliver at the office of the vendors' solicitor aforesaid, a statement in writing specifying his objections and requisitions (if any) in respect of the title, and in default thereof and subject thereto, he shall be taken to have conclusively accepted the title; and all objections and requisitions not so sent and delivered as aforesaid shall be considered as waived, and in this respect time shall be deemed to be of the essence of the contract; and if any objection or requisition shall be taken or made by any purchaser which the vendors shall be unable or unwilling to answer, remove or comply with, they shall be at liberty (notwithstanding any intermediate negotiation or litigation on the subject of such objection or requisition, or attempt to answer,

remove or satisfy the same) by notice in writing signed by their solicitor and given to the purchaser taking such objection or making such requisition, or his solicitor, to annul the sale and return his deposit without interest thereon to such purchaser, and without any liability to repay or make good any costs, losses or expenses which he may sustain in consequence of his purchase; and the purchaser shall thereupon return to the vendors or their solicitor the abstract of title and all other papers which may have been delivered to him or his solicitor by the vendors or their solicitor.

4.—The title to Lots and respectively shall commence with an indenture dated the day of 18 , made between
and as to the remaining lots, with the lease or leases under which the property purchased is held (*a*).

5.—As to the several lots consisting of leasehold property, the last receipt for ground rent shall be taken as conclusive evidence of the performance of all covenants and conditions contained in the lease or under-lease under which the premises are held up to the date of the completion of the respective purchases, and no evidence shall be required that such receipt is under the hand or hands of the person or persons properly qualified to give the same. No objection shall be taken or made, if it should appear that any deed or document of title is unstamped or insufficiently stamped, or that any deed or document of title has not been registered in Middlesex, nor on account of any variances between the covenants contained in the said leases or under-leases, or any of them, and those contained in the sub-lease or agreement under which the present occupier holds the lot in question.

6.—The several leases with which the title to each lot is to commence, and the counterparts of the several leases and sub-leases, may be inspected at the office of the vendors' solicitor, at
aforesaid, seven days prior to the day of sale (and any information obtained thereon), and will be produced at the sale; and the several purchasers shall be deemed to have bought with full notice of the

(*a*) *See* note (*a*) to Precedent No. 1, *ante*, p. 247.

contents thereof, as also of the state of the premises purchased, which may be viewed prior to the sale, whether he shall have inspected or viewed the same or not, and shall make no objection or requisition in respect of anything contained in such deeds or documents, or omitted therefrom, or as to the state of the premises.

7.—Upon payment of the purchase-money at the time and place above-mentioned, the vendors will execute a proper assurance to each purchaser of the premises purchased by him, and no person other than the vendors shall be required to be a party to such assurance, except as to Lot , which is subject to an indenture of mortgage dated the day of , 18 , which will be paid off out of the purchase-money, and the mortgagor will concur in the assurance to the purchaser. Every such assurance shall be prepared by and at the expense of the purchaser, and shall be tendered or left for execution at the office of the vendors' solicitor five days prior to the said day of , 18 . The vendors are executors, and selling under a direction or trust for sale, and the concurrence of persons beneficially entitled shall not be required in any conveyance or other assurance except as to Lot .

8.—Documents of title relating exclusively to the premises offered for sale shall, if affecting one lot only, be delivered to the purchaser of such lot, but if affecting other premises, shall be delivered to the purchaser of the premises of largest value, who shall enter into an acknowledgment for production to the purchasers of the other lots to which such documents relate, but the said documents will be retained by the vendors until all the lots to which they relate have been sold, and every acknowledgment under the present condition shall be prepared by and at the expense of the purchaser requiring the same, and the expense of the perusal and execution by all necessary parties shall be borne by the purchaser.

9.—Every recital or statement, whether of fact or conclusion of law, contained in any deed or document of title dated ten years or upwards prior to the day of sale, shall be conclusive evidence of every matter or thing so recited or stated, or reasonably to be implied or inferred therefrom, without any further proof or inquiry.

10.—Each lot is believed and shall be taken to be correctly described, and each purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the vendors as the title to such property. And all the property is sold subject to all rights and easements (if any) affecting the same, as well as to the existing tenancies; and as the purchasers can inspect the several leases, sub-leases and agreements, and also the premises, as before mentioned, should there be any mistake or error, the same shall not vitiate or annul the sale, nor any compensation or equivalent be given or taken in respect thereof.

LASTLY.—Should any purchaser neglect or fail to comply with these conditions, his deposit-money shall be forfeited, and the vendors shall be at liberty to resell the premises, either by public auction or private contract, and either together or in lots, under such conditions as they may think fit, and the deficiency (if any) attending such second sale, together with all incidental charges, shall be made good by the defaulter at the present sale, and the same shall be recoverable as liquidated damages, and any increase of price which shall be obtained on such second sale shall belong absolutely to the vendors, and it shall not be necessary for them to tender any assignment or other assurance to the defaulting purchaser.

No. 5.

Special Conditions of Sale (adopted by the Liverpool Law Society).

1.—The property is offered subject to the Public Sale Conditions of the Incorporated Law Society of Liverpool, a copy of which is annexed.

2.—The deposit shall be at the rate of £10 per centum of the purchase-money, and the purchase shall be completed and the balance of the purchase-money paid at the office of
on day of next.

3.—The abstract of title shall be delivered within days from the sale, and the title shall commence with

Objections and requisitions shall be delivered within days from the day of the delivery of the abstract.

PUBLIC SALE CONDITIONS OF THE INCORPORATED LAW SOCIETY OF LIVERPOOL.

1.—The highest bidder shall be the purchaser, and if any dispute arise concerning the highest bidding, the property shall be put up again at a former bidding.

2.—The property is offered subject to a reserved price, and the vendor may withdraw the property without declaring the reserved price, and may refuse any bidding, and may offer the property in other lots than those mentioned in the particulars.

3.—No person shall advance a less sum at each bidding than that fixed from time to time by the Auctioneer during the sale, or retract a bidding.

4.—The purchaser shall immediately after the sale pay to the vendor or his solicitor the deposit mentioned in the Special Conditions of Sale, and sign an agreement in the form subjoined to complete the purchase according to the Conditions of Sale.

5.—The abstract of title shall include copies of or sufficient extracts from all plans or maps of or including the property sold, drawn upon any of the abstracted documents.

6.—The purchaser shall be satisfied with the commencement of title mentioned in the Special Conditions of Sale, and shall not require the production of, nor investigate, nor make any objection or requisition in respect of the prior title, although such prior title may be noticed in any document.

7.—The purchaser shall make his objections and requisitions (if any) in respect of the title, and of all matters appearing on the abstract, particulars, or conditions, and send the same to the office of the vendor's solicitor, within the time mentioned in the Special Conditions of Sale (and in this respect time is to be of the essence of the contract); and in default of such objections and requisitions (if

none), and subject to such (if any), shall be deemed to have accepted the title, and to have waived all other objections and requisitions; and if the purchaser shall insist on any objection or requisition as to the title, or abstract, or evidence of title, particulars, conditions, conveyance, surrender or otherwise (not being a claim for compensation falling within the 10th of these conditions) which the vendor shall be unable, or on the ground that the expense would be unreasonably heavy, unwilling to remove or comply with, the vendor may by notice in writing to be given to the purchaser or his solicitor at any time, and notwithstanding any negotiation or litigation in respect of such objection or requisition, or any attempt to remove or comply with the same, rescind the contract, unless within 14 days after the delivery of such notice the purchaser shall, by notice in writing, withdraw such objection or requisition, and upon such rescission the deposit shall be returned to the purchaser, but without any interest, costs of investigating the title, or other compensation or payment whatever, and the purchaser shall thereupon return the abstract and other papers furnished to him. For the purpose of any objection or requisition, the abstract of title shall be deemed to be perfect, if it supply the information suggesting the same, although otherwise defective.

8.—Every deed, entry upon or copy of court-roll, and document dated 20 years or more prior to the day of sale, shall be sufficient evidence of everything recited, stated, noticed, assumed or implied therein, unless and except so far as the same shall be proved to be inaccurate.

9.—The purchaser shall bear the expense of and incidental to the production of all deeds and documents (if any) not in the vendor's possession, and of which the vendor shall produce attested copies, and of and incidental to stamping any unstamped or insufficiently stamped deed or document dated twenty years or more prior to the day of sale, and of and incidental to obtaining and making all attested or other copies or extracts of or from deeds or court-rolls or other documents, whether in the vendor's possession or not, and of and incidental to obtaining, making and producing all office and other copies of or extracts from records, registers, wills, probates, letters of

administration, enclosure awards, proceedings in courts of law or equity, and other documents of a like kind, dated twenty years or more prior to the day of sale; and the purchaser shall also bear the expense of all searches, inquiries and journeys for the above purposes or any of them. For the purpose of this condition, documents in the possession of a mortgagee shall be deemed to be in the vendor's possession.

10.—If any error or mistake shall appear to have been made in the description of the property, or of the vendor's interest therein, the same shall not annul the sale, but if the same shall be pointed out, either by the vendor or purchaser, prior to the time appointed for the completion of the purchase, compensation shall be allowed or given by the vendor or purchaser as the case may require.

11.—The property is sold subject to all tenancies not exceeding in duration tenancies from year to year, and subject to all easements other than rights of way, and to land tax, tithes, tithe commutations and other outgoings.

12.—The property shall from the time of sale be at the risk of the purchaser, as respects loss or damage by fire, the dropping of lives and other accidents; and when the property is insured against loss or damage by fire, the purchaser shall be entitled to the benefit of such insurance, but shall upon the completion of the purchase pay to the vendor a proportionate part of the current premium.

13.—When the property is held under a lease reserving any rent, and the receipt for the last payment of rent which accrued previously to the completion of the purchase is produced, or when the property is held under a lease at a nominal rent, the purchaser shall (unless there be a substantial and manifest breach of covenant) assume that the covenants and conditions in the lease have been performed and observed up to the completion of the purchase, or that all breaches of such covenants and conditions have been effectually waived. The nature of such covenants and conditions may be ascertained from the lease or a copy, or a sufficient abstract thereof, which will be produced and may be examined at the office of the vendor's solicitor, at any time between the hours of 10 a.m. and 1 p.m., on the three working

days immediately preceding the day of sale, and which will also be produced at the time of sale, and the purchaser, whether he examine the same or not, shall be taken to have bought with full notice of such covenants and conditions.

14.—If before the completion of the purchase the vendor shall have expended any money in complying with any requirement enforceable against him and made after the sale by the municipal corporation, local board of health, or other local authority of the borough or district within which such property is situated, in respect of such property, or of the paving or flagging of the roads, streets or passages adjoining the same, the purchaser shall, on the completion of the purchase, repay to the vendor the amount so expended by him; and in case any such requirement shall not have been complied with before the completion of the purchase, the purchaser shall indemnify the vendor in respect thereof, but the vendor shall, upon receiving notice of any such requirement, inform the purchaser thereof, and give to him the option of complying therewith in lieu of the vendor doing so, and shall not expend any money for the purpose aforesaid, unless the purchaser shall refuse or neglect to comply with such requirement.

15.—The purchaser shall pay the remainder of his purchase-money at the time and place appointed by the Special Conditions of Sale for the completion of the purchase, and upon such payment the vendor and all other necessary parties (if any) will execute a proper assurance of the property to the purchaser, but such assurance and every other assurance and act which shall be required by the purchaser for getting in, surrendering, or releasing any outstanding estate, right, title or interest, shall be prepared, made and done by and at the expense of the purchaser, and every such assurance shall be tendered or left by him not less than seven days before the day appointed for the completion of the purchase at the office of the vendor's solicitor, and the expense of the perusal on behalf of, and execution and acknowledgment by the vendor, and all necessary conveying parties of all such assurances shall be borne by the vendor. When the vendor is a mortgagee or trustee selling under a power or

trust, the purchaser shall not be entitled to any other covenant as to title than a covenant by the vendor that he has not encumbered the property.

16.—The rents or possession will be received or retained, and the outgoings discharged by the vendor up to the day appointed by the Special Conditions of Sale for the completion of the purchase, and as from that day, the outgoings shall be discharged and the rents or possession taken by the purchaser, and such rents and outgoings shall (if necessary) be apportioned between the vendor and the purchaser for the purpose of this condition.

17.—If the purchaser shall not complete the purchase at the time appointed, he shall pay interest on the remainder of his purchase-money at the rate of £5 per centum per annum from that time until the same shall be paid, or the vendor may, at his option, take the rents or retain possession of the property, the current rent and outgoings being, if necessary, apportioned between the vendor and the purchaser. Provided always, that if the delay in the completion of the purchase shall arise from any cause other than the neglect or default of the purchaser, and if the purchaser shall at his own risk and expense deposit the remainder of the purchase-money in any bank, upon a deposit account bearing interest, and shall forthwith give notice of such deposit to the vendor, the vendor shall, from the time of such deposit, be entitled to such interest only (if any) as shall be actually produced thereby, and shall not be entitled to take the rents under the preceding proviso.

18.—The vendor will retain such muniments of title as relate to any part of the property offered for sale, and also to other property belonging to the vendor not included in the sale, and will enter into covenants with the purchaser for the production and furnishing copies thereof, such covenants to be prepared by and at the expense of the purchaser; and whenever the vendor is a trustee or mortgagee, such covenants shall be framed so as to bind the vendor only while having the custody of the same muniments, but so far as is practicable, to bind such muniments into whosesoever hands the same may come.

19.—It shall not be necessary in any case or for any purpose for the vendor to prepare or tender to the purchaser a conveyance of the property sold to him.

20.—Upon the sale of property in lots, these Conditions and the Special Conditions of Sale shall be applicable to each separate lot in the same manner as if such lot had formed the only property sold, except, however, that the purchaser of more lots than one shall not be entitled to more than one abstract of the title which may be common to two or more of such lots, and that the purchaser of the largest part in value of property held under the same title shall be entitled, upon the completion of the sale of all such property, to the custody of the muniments of title comprising the same, and not comprising any other property belonging to the vendor, and shall enter into covenants with the purchasers of the other parts of the same property for the production and furnishing copies of such muniments, such covenants to be prepared by and at the expense of the purchasers requiring the same, but to be perused and executed at the expense of the covenantor.

21.—If the purchaser shall neglect or fail to comply with the Special or Public Sale Conditions, the vendor may rescind the contract, and retain the deposit as liquidated damages, or he may resell the property either by public auction or private contract, and subject to such conditions as he may think fit; and the deficiency, if any, on such resale, together with all expenses attending the same, and all costs, losses, damages and expenses by reason of such default, shall be made good to the vendor by the defaulter; and in case of non-payment, the same shall be recoverable by the vendor as liquidated damages, but any surplus on such second sale shall be retained by the vendor for his own benefit.

The Form of Agreement for Completion of the Purchase referred to in the foregoing Public Sale Conditions.

MEMORANDUM OF AGREEMENT made the day of 18 , between
the vendor of the one part, and
the purchaser of the other part.

WHEREBY IT IS WITNESSED, that the said is the purchaser of the property described in the foregoing particulars, at the price of subject to the foregoing Special Conditions of Sale and Public Sale Conditions, and the vendor and purchaser do, on their respective parts, agree to complete the sale and purchase according to the said conditions.

As witness the hands of the parties.

Received the sum of the deposit on the said purchase.

Dated this day of 18

No. 6.

Conveyance of Freeholds to a Purchaser in Fee.

THIS INDENTURE, made the day of 18 between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part, WITNESSETH that in consideration of the sum of £ paid to the vendor by the purchaser for the purchase of the fee simple of the lands (*a*) hereinafter mentioned, of which sum the vendor hereby acknowledges the receipt, the vendor, as beneficial owner, hereby conveys to the purchaser All, &c. (*parcels*) (*b*) to hold unto and to the use of the purchaser in fee simple (*c*). *Add if required as follows*:—And the vendor hereby acknowledges the right of the purchaser to production of the documents of title mentioned in

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(*a*) By sec. 6, a conveyance of land includes all the buildings upon it and all things appurtenant thereto.

(*b*) The general words are rendered unnecessary by sec. 6, and all the estate, &c., by sec. 63 of the Act.

(*c*) The vendor's covenants for title are implied (sec. 7), and in the absence of any stipulation to the contrary, a vendor may object to the insertion of the covenants.

the schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*a*).

In witness, &c.

THE SCHEDULE.

No. 7.

Conveyance of Freeholds subject to a Lease.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture dated, &c., and made between (*parties*), the vendor did demise the lands hereinafter mentioned to *E. F.* for the term of years, from the day of , then last past, at the yearly rent of £ , and subject to the covenants and conditions therein contained. NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the vendor by the purchaser, for the purchase of the fee simple of the lands hereinafter mentioned, the receipt whereof the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys to the purchaser All, &c. (*parcels*), together with the full benefit of the rent, covenants and other the benefits and advantages reserved by the said indenture of lease, To hold the same subject to the said indenture of lease, unto and to the use of the purchaser in fee simple (*if required, add acknowledgment of right to production of title deeds, as in Precedent No.* 1.)

In witness, &c.

No. 8.

Conveyance of Freeholds by Mortgagee, Mortgagor joining.

THIS INDENTURE, made the day of 18 between *A. B.*, of, &c. (hereinafter called the mortgagor), of the first part,

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(*a*) The usual declaration to bar dower can be inserted here, if desired.

C. D., of, &c. (hereinafter called the mortgagee), of the second part, and *E. F.*, of, &c. (hereinafter called the purchaser), of the third part. Whereas, by an indenture dated, &c., and made between the mortgagor of the one part, and the mortgagee of the other part, the lands hereinafter mentioned were conveyed by the mortgagor to the mortgagee in fee simple, by way of mortgage for securing £ and interest; and whereas the principal sum of £ remains due, but all interest thereon has been paid up to the date of these presents, as the mortgagee hereby acknowledges. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ paid by the direction of the mortgagor to the mortgagee, and of the sum of £ paid to the mortgagor, making together the total sum of £ paid by the purchaser for the purchase of the fee simple of the lands hereinafter mentioned, of which sum of £ the mortgagee hereby acknowledges the receipt, and of which total sum of £ the mortgagor hereby acknowledges the payment and receipt in manner before-mentioned, the mortgagee as mortgagee, and by the direction of the mortgagor as beneficial owner, hereby conveys, and the mortgagor as beneficial owner, hereby conveys and confirms to the purchaser All that, &c. (*parcels*) To hold unto and to the use of the purchaser in fee simple, discharged from all moneys secured by and from all claims under the before-mentioned indenture.

In witness, &c.

No. 9.

Conveyance of Freeholds by a Mortgagee, the Mortgagor not joining.

THIS INDENTURE, made the day of 18 , between *A. B.*, of &c. (hereinafter called the vendor) of the one part, and *C. D.*, of &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture dated (&c.), and made between (&c.), the lands hereinafter mentioned were conveyed by *E. F.* (*mortgagor*) to the vendor in fee simple, by way of mortgage, for securing £ and interest, subject to a proviso therein contained for the redemption of the said lands, on payment by *E. F.* of the said sum of £ , with

interest thereon, after the rate of £ per cent. per annum on the day of but in payment whereof default was made (*a*), and the vendor is now entitled to exercise the power of sale conferred upon mortgagees by the Conveyancing and Law of Property Act, 1881: NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the vendor by the purchaser for the purchase of the fee simple of the lands hereinafter mentioned, the receipt whereof the vendor hereby acknowledges, the vendor, as mortgagee, hereby conveys to the purchaser, All, &c. (*parcels*) To hold unto and to the use of the purchaser, in fee simple (*b*).

In witness, &c.

No. 10.

Conveyance of the Equity of Redemption in Freeholds, the Purchaser covenanting to pay off the Mortgage.

THIS INDENTURE, made the day of 18 , between, *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture dated, (&c.), and made between (&c.), the lands hereinafter mentioned were conveyed by the vendor to *E. F.* (*mortgagee*) in fee simple, by way of mortgage for securing £ and interest, subject to a proviso therein contained for the redemption of the said lands, on payment by the vendor of the said sum of £ with interest thereon after the rate of £ per cent. per annum, on the day of . And whereas the said principal sum of £ remains due to *E. F.*, but all interest thereon has been paid up to the date of these presents. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ paid by the purchaser to the vendor for the purchase of the fee simple

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(*a*) The mortgage here recited is one assumed to be made after the 31st December, 1881. If made before that date, it is desirable to fully recite the mortgage and power of sale. If the mortgage be in the statutory form, given in the third schedule of the Act, the proviso for redemption is not set out in the mortgage, but implied. (Sec. 26.)

(*b*) The mortgagee's covenant against incumbrances is implied. (Sec. 7.)

of the lands hereinafter mentioned (subject to the said principal sum of £ , and the interest henceforth to become due for the same), the receipt of which sum of £ the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys to the purchaser All that, &c. (*parcels*) To hold subject to the said indenture of mortgage, and all moneys thereby secured, unto and to the use of the purchaser in fee simple. And the purchaser hereby covenants (*a*) with the vendor that he, the purchaser, will pay the principal sum of £ , and all interest henceforth to become due thereon, and will at all times keep the vendor indemnified against the payment of the said sum of £ , and the interest thereon, and against all actions claims and demands for the same or in any wise relating thereto.

In witness, &c.

No. 11.

Conveyance of the Equity of Redemption in Freeholds to a Mortgagee as Purchaser.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser) of the other part. Whereas, by an indenture dated, (&c.), and made between (&c.), the lands hereinafter mentioned were conveyed by the vendor to the purchaser in fee simple, by way of mortgage for securing £ and interest, subject to a proviso therein contained for the redemption of the said lands, on payment by the vendor of the said sum of £ , with interest thereon after the rate of £ per cent. per annum, on the day of . And whereas the said principal sum of £ remains due to the purchaser, but all interest thereon has been paid up to the date of these presents. And whereas, the vendor has agreed with the purchaser for the sale to him of the

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(*a*) By sec. 59, a covenant binds the heirs, executors and administrators of the covenantor, though they be not named; and by sec. 58, the benefit of a covenant with respect to freeholds is to be deemed to extend to the heirs and assigns of the covenantee. It is therefore unnecessary to name them.

lands hereinafter mentioned, in fee simple, at the price of £ ; and it has been agreed that the said mortgage debt of £ should be retained by the purchaser out of the said purchase-money. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ retained by the purchaser, in full satisfaction of all moneys remaining due to him upon the said mortgage (which the purchaser hereby declares to be fully satisfied), and in consideration of the remaining £ paid by the vendor to the purchaser, the receipt whereof (making with the said sum of £ retained as aforesaid the said purchase-money of £) the vendor doth hereby acknowledge, The vendor, as beneficial owner, hereby conveys to the purchaser, All that, &c. (*parcels*), To hold unto and to the use of the purchaser in fee simple. In witness, &c.

No. 12.

Conveyance of Leaseholds to a Purchaser.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture of lease dated the day of , and made between (*parties*), All, &c., (*parcels as in Lease*) were demised unto the vendor (*a*) from the day of , for the term of years, at the yearly rent of £ and subject to the lessee's covenants therein contained. NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the vendor by the purchaser for the purchase of the lessee's interest in the said lease, the receipt whereof the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys to the purchaser all the land and premises demised by the said lease, and which premises are now known as , to hold unto the purchaser for the residue of the term of years granted by the said recited lease, at the yearly rent and subject

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(*a*) It is assumed this recital is of a lease granted after the 31st December, 1881. If the lease is of prior date, the words of limitation should be inserted.

to the lessee's covenants and the conditions therein contained. And the purchaser doth hereby covenant (*b*) with the vendor, that he, the purchaser, will henceforth pay the rent by the said lease reserved, and perform all the lessee's covenants therein contained, and will at all times hereafter indemnify the vendor and his estate and effects from the payment of the said rent and the performance of the said covenants, and from all actions, claims and demands whatsoever, for or in respect of the same.

In witness, &c.

No. 13.

Conveyance of Leaseholds by an Executor.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (*executor*) (hereinafter called the vendor), of the one part, and *C. D.* of, &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture of lease dated the day of , and made between (*parties*), All &c. (*parcels as in lease*) were demised unto *G. H.* (*a*) from the day of , for the term of years, at the yearly rent of £ , and subject to the lessee's covenants therein contained And whereas, by divers *mesne* conveyances and other acts in the law, and ultimately by an indenture of conveyance dated (&c.), and made between (&c.), the said premises became vested in *E. F.* for the residue of the term created by the said recited indenture of lease. And whereas, *E. F.* died on the day of , having duly made his Will, dated the day of , and thereby appointed the vendor executor thereof, who duly proved the same, on the day of , in the Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice. NOW THIS INDENTURE WITNESSETH, that in consideration of £ , paid to the vendor by the

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(*a*) Although the vendors' covenants for title and validity of lease are implied (sec. 7), the covenant by the purchaser for the payment of rent and performance of the covenants has, strangely enough, not been made an implied covenant, so it must be inserted.

purchaser for the purchase of the lessee's interest in the said lease, the receipt whereof the vendor hereby acknowledges, the vendor, as executor of *E. F.*, hereby conveys to the purchaser, All the land and premises demised by the said lease, and which premises are now known as To hold unto the purchaser for the residue of the term of years, granted by the said recited lease, at the yearly rent and subject to the lessee's covenants and the conditions therein contained (*a*). And the purchaser doth hereby covenant with the vendor, that he, the purchaser, will at all times hereafter, during the said term of years, pay the yearly rent reserved by the said indenture of lease, and observe and perform all the lessee's covenants and the conditions therein contained, and will keep the vendor, and the estate and effects of *E. F.*, deceased, indemnified against the payment of the said rent and the observance of the said covenants and conditions, and all actions, claims and demands whatsoever for or in respect of the same.

In witness, &c.

No. 14.

Conveyance of Freeholds and Leaseholds to a Purchaser.

THIS INDENTURE, made the day of , 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas, by an indenture of lease dated the day of , and made between (*parties*), All, &c. (*parcels as in lease*), were demised unto the vendor (*b*) from the day of , for the term of years, at the yearly rent of £ , and subject to the lessee's covenants therein contained. And whereas, the vendor has agreed with the purchaser for the absolute sale to him of the freehold lands hereinafter mentioned, and of the leasehold lands comprised in the hereinbefore-recited

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(*a*) The executor's covenant against incumbrances is implied. (Sec. 7.)

(*b*) It is assumed this recital is of a lease granted after the 31st December, 1881. If the lease is of prior date, the words of limitation should be inserted.

indenture of lease for the residue of the said term of years, subject to the rent covenants and conditions reserved by and contained in the said indenture of lease at the price of £ . NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £ paid to the vendor by the purchaser, the receipt whereof the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys to the purchaser, Firstly, all, &c. (*freehold parcels*); Secondly, all the land and premises demised by the said lease, and which premises are now known as , to hold as to the lands firstly hereinbefore described unto and to the use of the purchaser in fee simple, and as to the lands secondly hereinbefore described, unto the purchaser for the residue of the term of years granted by the said recited lease, at the yearly rent and subject to the lessee's covenants and the conditions therein contained. And the purchaser doth hereby covenant with the vendor that he, the purchaser, will henceforth pay the rent by the said lease reserved, and perform all the lessee's covenants therein contained, and will at all times hereafter indemnify the vendor and his estate and effects from the payment of the said rent and the performance of the said covenants, and from all actions, claims and demands whatsoever, for or in respect of the same.

In witness, &c.

No. 15.

Conveyance by a Husband and Wife of Freeholds, the Property of the Wife (*a*).

THIS INDENTURE, made the day of , 18 , between *A. B.*, of, &c., and *C.*, his wife (hereinafter called the vendors), of the one part, and *D. E.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas (*recite Will or other Instrument under*

(*a*) A conveyance by a wife married prior to the 1st January, 1883, the commencement of the Married Women's Property Act, 1882, must be acknowledged, pursuant to 3 & 4 Will. IV. c. 74., if the property was acquired prior to that date. It is perhaps open to doubt whether a conveyance of property acquired after that date, or held by a woman married after that date, requires to be acknowledged. (See note to sec. 7, Conveyancing Act, 1882.)

which the wife became entitled to the freehold). NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the vendors by the purchaser for the purchase of the fee simple in the lands hereinafter mentioned, the receipt whereof the vendors do hereby acknowledge, the vendors, as beneficial owners, do by this deed, duly acknowledged by *C. B.*, pursuant to the statute in that behalf, convey to the purchaser, All that (*parcels*), To hold unto and to the use of the purchaser in fee simple (*a*).

In witness, &c.

No. 16.

Conveyance of Freeholds by a Husband to his Wife (*b*).

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (*husband*), of the one part, and *C. B.* (*wife of A. B.*), of the other part, WITNESSETH that, in consideration of natural love and affection, *A. B.*, as beneficial owner, hereby conveys to *C. B.*, his wife, All, &c. (*parcels*), To hold unto and to the use of *C. B.*, in fee simple.

In witness, &c.

No. 17.

Deed of Covenant to surrender a Copyhold Estate (*c*).

THIS INDENTURE, made the day of , 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one

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(*a*) The usual covenants for title are implied as against the husband, and the wife is deemed to convey by direction of the husband (sec. 7, sub-sec. 3).

(*b*) By sec. 50, power is given to a husband to convey to his wife alone. It is assumed that such a document will be voidable to the same extent and under the same circumstances as a voluntary settlement made by the husband to a trustee for the benefit of his wife *simpliciter*. Unless the conveyance is made after the 1st January, 1883, the wife could not afterwards convey, except her husband joined and the deed was acknowledged. Even after that date it may be desirable for a husband to convey to trustees, to such uses, &c., as the wife should appoint, rather than to the wife direct.

(*c*) A deed conferring the right to admittance to copyhold or customary land is, by sec. 7, sub-sec. 5, declared a conveyance within that section, and the vendor's covenants for title are implied accordingly.

part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part, WITNESSETH that, in consideration of £ paid to the vendor by the purchaser for the purchase of the estate and interest in the lands hereinafter mentioned, the receipt whereof the vendor hereby acknowledges, he (the vendor), as beneficial owner, hereby covenants with the purchaser that he (the vendor) will forthwith, at the cost of the purchaser, surrender, or cause to be surrendered into the hands of the lord of the manor of in the county of according to the custom of the said manor, All, &c. (*parcels*), To the use of the purchaser, in customary fee simple, at the will of the lord of the said manor, according to the custom of the said manor, by and under the suits, services, rents, fines, and heriots therefor due and of right accustomed.

In witness, &c.

No. 18.

Conveyance of Freeholds under a Power of Attorney by the Attorney in his own Name (*a*).

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (attorney of *E. F.* of, &c.), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other part. Whereas (*recite Will, or other document under which property acquired by E. F*). And whereas, by an instrument in writing under the hand of *E. F.*, dated *E. F.* duly appointed *A. B.* to be his true and lawful attorney for him, and in the name of *A. B.* absolutely to sell the lands belonging to *E. F.*, or any part or parts thereof, at such times and in such manner as *A. B.* should think proper, and to receive the purchase-money and to give receipts for the same. And whereas *A. B.* has, by direction of *E. F.*, agreed with the said *C. D.* for the sale to him of the lands hereinafter mentioned in fee simple for the price of £ (*a*). NOW THIS INDENTURE WITNESSETH, that in consideration of £

(*a*) Unless the deed purports to be made by direction of the beneficial owner, it will be necessary to insert the covenants for title, as an attorney is not one of the class of persons enumerated in sec 7, sub-sec. 4, and covenants for title are implied only as against the persons enumerated.

paid to *A. B.* as such attorney as aforesaid, by *C. D.*, for the purchase of the fee simple of the lands hereinafter mentioned, of which sum *A. B.* hereby acknowledges the receipt, *A. B.*, as such attorney as aforesaid, and by the direction of *E. F.*, hereby conveys to *C. D.*, All, &c. (*parcels*), To hold unto and to the use of *C. D.* in fee simple (*a*).

In witness, &c.

No. 19.

Conveyance of a Life Estate in Freeholds.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part. Whereas, under and by virtue of (*recite Will or other Instrument under which the life estate of A. B. is created*), the vendor is entitled to the lands hereinafter described for an estate during his life, without impeachment of waste. NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the vendor by the purchaser for the purchase of the life estate of the vendor in the lands hereinafter mentioned, the receipt whereof the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys to the purchaser, All, &c. (*parcels*), To hold unto and to the use of the purchaser for the remainder of the life of the vendor.

In witness, &c.

No. 20.

Conveyance of Freeholds by personal representative of a Deceased Vendor to a Purchaser (b).

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c., administrator of *E. F.*, late of, &c., deceased (*vendor*), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other

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(*a*) The covenants for title are, by sec. 7, sub-sec. 2, implied against the owner as the person giving the direction.

(*b*) By sec. 4 it is provided that the personal representatives have the power to convey the freehold interest of a person who had entered into a contract to sell, but died before completion. The heir or devisee is therefore not a necessary party to this conveyance. (*See*, however, note to sec. 4, p. 32.)

part. Whereas the said *E. F.*, by an agreement in writing dated the , agreed with *C. D.* for the sale to him of the lands hereinafter mentioned, in fee simple, at the price of £ , but the said sale was not completed in the lifetime of *E. F.* And whereas *E. F.* died intestate on the day of , and letters of administration of his estate and effects were, on the day of granted to *A. B.* out of the Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ paid to *A. B.* by *C. D.* for the purchase of the fee simple of the lands hereinafter mentioned, of which sum *A. B.*, as such administrator as aforesaid, hereby acknowledges the receipt, *A. B.*, as such administrator as aforesaid, hereby conveys to *C. D.*, All, &c. (*parcels*), To hold unto and to the use of *C. D.* in fee simple.

In witness, &c.

No. 21.

Conveyance of Freeholds by a Trustee, under a Trust for Sale contained in a Will.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (*trustee*), of the one part, and *C. D.*, of, &c., (*purchaser*), of the other part. Whereas, *E. F.*, late of, &c., deceased, died on the day of , having by his Will, dated the day of , devised the lands hereinafter mentioned unto and to the use of *A. B.*, upon trust to sell. And whereas the said Will was duly proved in the Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice, on the day of . And whereas, *A. B.* has agreed with *C. D.* for the sale to him of the lands hereinafter mentioned, in fee simple, at the price of £ . NOW THIS INDENTURE WITNESSETH, that in consideration of £ to *A. B.* as such trustee as aforesaid, paid by *C. D.* for the purchase of the fee simple of the lands hereinafter mentioned, of which sum *A. B.* hereby acknowledges the receipt, *A. B.*, as trustee, hereby conveys to *C. D.*, All, &c. (*parcels*), To hold unto and to the use of *C. D.* in fee simple.

In witness, &c.

No. 22.

Surrender of a Lease to a Lessor for a money consideration.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (*lessee*), of the one part, and *C. D.*, of, &c. (*lessor*), of the other part, and supplemental (*a*) to an indenture of lease, dated , and made between *C. D.*, of the one part, and *A. B.* of the other part. Whereas, *C. D.* has agreed to purchase from *A. B.* a surrender of the lands comprised in the said lease, for the residue of the term thereby granted, at the price of £ . NOW THIS INDENTURE WITNESSETH, that in consideration of £ to *A. B.* paid by *C. D.*, for the purchase of the interest of *A. B.* in the said lands, the receipt of which sum *A. B.* hereby acknowledges, *A. B.*, as beneficial owner, hereby surrenders unto *C. D.*, All and singular the lands comprised in the said lease, to the intent that the interest of *A. B.* in the said lands may be merged in the reversion thereof.

In witness, &c.

No. 23.

Conveyance of household furniture and effects (*b*).

THIS INDENTURE, made the day of 18 between *A. B.*, of, &c. (hereinafter called the vendor), of the one part, and *C. D.*, of, &c. (hereinafter called the purchaser), of the other part, WITNESSETH, that in consideration of the sum of £ , paid to the vendor by the purchaser for the purchase of the household furniture and effects hereinafter mentioned, the receipt of which sum the vendor hereby acknowledges, the vendor, as beneficial owner, hereby conveys unto the purchaser all the household furniture

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(*a*) By sec. 53, a deed expressed to be supplemental to a previous deed shall be read as if it contained a full recital of the latter deed.

(*b*) If the goods are allowed to remain in the possession of the vendor, this deed should be registered under the Bills of Sale Act, 1878 (41 Vic., c. 31), in order to affect third parties. For form of conditional Bill of Sale *see* p. 299.

and effects now in or upon the premises (*add if desired*), and more particularly described in the schedule hereto (*a*) To hold to the said purchaser absolutely.

In witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. 24.

Mortgage of Freeholds.

THIS INDENTURE OF MORTGAGE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part, WITNESSETH that, in consideration of £ , paid to the mortgagor by the mortgagee, of which sum the mortgagor hereby acknowledges the receipt, the mortgagor hereby covenants with the mortgagee to pay him, on the day of , the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also, as long after that day as any principal money remains due under this mortgage, to pay to the mortgagee interest thereon at the same rate by equal half-yearly payments on the day of , and the day of . AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the mortgagor, as beneficial owner, hereby conveys to the mortgagee, All that, &c. (*parcels*), To hold the same unto and to the use of the mortgagee in fee simple, subject to the proviso for redemption following (namely), that if the mortgagor or any person claiming under him, shall, on the day of , pay to the mortgagee the sum of £ , and interest thereon at the rate aforesaid, then the mortgagee, or the person claiming under him, will, at the request and costs of the mortgagor or the persons claiming under him, re-convey the premises to the mortgagor

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(*a*) A schedule is necessary, under the Bills of Sale Act, 1882.

or the persons claiming under him (*a*). And the mortgagor hereby covenants with the mortgagee as follows (*b*): That he, the mortgagor, will not at any time hereafter grant, or enter into any agreement to grant, any lease of the lands before mentioned, or any part thereof, without the consent in writing of the mortgagee (*c*); and it is hereby agreed that the mortgagor shall not be entitled to redeem this present mortgage without first paying to the mortgagee any money that may be due to him, on any other mortgage executed by the mortgagor, or by any person through whom he claims (*d*). And it is further agreed, that the mortgagee may at any time, without any further consent on the part of the mortgagor, demise or enter into any agreement to demise the said lands, or any part thereof, upon any terms he thinks fit, provided always that this power shall not be exercised until such time as he is by law empowered to sell, provided also that no lessee under the aforesaid power shall be bound to inquire whether such time has arrived, or be affected by notice that such time has not arrived; and it is further agreed, that the said power may be exercised by the person who for the time being is by law empowered to sell (*e*). And it is further agreed, that the mortgagee may, if he thinks fit, insure the said hereditaments in a sum not exceeding £ from loss or damage by fire, and the mortgagor hereby covenants to forthwith repay to the mortgagee such sum as may be charged for the premium on any such

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(*a*) By sec. 15, a mortgagee is bound, if required by the mortgagor, to transfer the mortgage to any third person on the terms upon which he would have to re-convey.

(*b*) The usual powers to sell, to appoint a receiver, and to cut timber, are implied by the Act (sec. 19).

(*c*) Sec. 18 enables a mortgagor while in possession to lease, subject to certain conditions. It may be deemed advisable to provide that he shall not do so without the mortgagee's consent, and therefore this covenant is inserted.

(*d*) The object of this agreement is to preserve the mortgagee's right to consolidate, which sec. 17 would otherwise take away.

(*e*) Sec. 18 enumerates the conditions subject to which a mortgagee in possession might demise; but this agreement should be inserted, if it is desired not to restrict a mortgagee.

insurance (*a*). AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the mortgagor doth hereby attorn and become tenant from quarter to quarter to the mortgagee in respect of the said premises (*b*), at a yearly rent of £ (*c*), by equal quarterly payments, the first payment to be made on the first day of the month next after any interest hereby secured shall have become in arrear; but all money received by the mortgagee for rent under the attornment hereinbefore contained shall be accepted in the first place in or towards satisfaction of the interest then in arrear. Provided always, that the attornment hereinbefore contained shall not render it compulsory on the mortgagee to collect the rent payable thereunder, and that he shall not be accountable to any subsequent incumbrancer for any rent that might have been recovered under such attornment. Provided also, that the mortgagee may at any time, after he is by law empowered to sell, without any notice enter upon and take possession of the said land and premises and determine the last-mentioned tenancy.

In witness, &c.

No. 25.

Mortgage of Copyholds.

THIS INDENTURE OF MORTGAGE, made the day of 18 , between *A. B.*, of &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of &c. (hereinafter called the mortgagee), of the other part, WITNESSETH, that in consideration of £ paid to the mortgagor by the mortgagee, of which sum the

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(*a*) A power to insure is by sec. 19 implied in every mortgage made by deed; but sec. 23 restricts this power in certain cases, and a mortgagee may well wish to have an uncontrolled right to insure.

(*b*) As the attornment clause gives the right to distrain, it is a ready means of enforcing payment of arrears of interest where the mortgagor is himself in occupation of the mortgaged premises. To affect third persons, however, the mortgage should be registered under the Bills of Sale Act; but the attornment is binding on the mortgagor, even if not registered. Money obtained by distress can be applied in payment *pro tanto* of the principal due. (*In re* Betts *ex parte* Harrison, 50 L. J. (C. A.) 832.)

(*c*) A sum equal to the yearly interest should be inserted here.

mortgagor hereby acknowledges the receipt, the mortgagor hereby covenants with the mortgagee to pay him, on the day of , the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also, as long after that day as any principal money remains due under this mortgage, to pay to the mortgagee interest thereon at the same rate by equal half-yearly payments on the day of , and the day of . AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the mortgagor as beneficial owner, doth hereby covenant with the mortgagee, that he, the mortgagor, will forthwith, at his own costs, surrender unto the hands of the lord of the manor of , according to the customs of the said manor, All, &c. (*parcels*), To the use of the mortgagee in customary fee simple, according to the customs of the said manor, by and under the rents and services due, and of right accustomed, subject nevertheless to a proviso for making void the said surrender, in case the mortgagor or any person claiming under him, shall on the day of , pay to the mortgagee the sum of £ , and interest thereon at the rate aforesaid. And the mortgagor hereby covenants with the mortgagee as follows: That he, the mortgagor, will not at any time hereafter grant, or enter into any agreement to grant, any lease of the lands before mentioned, or any part thereof, without the consent in writing of the mortgagee; and it is hereby agreed that the mortgagor shall not be entitled to redeem this present mortgage without first paying to the mortgagee any money that may be due to him on any other mortgage executed by the mortgagor, or by any person through whom he claims. And it is further agreed, that the mortgagee may at any time, without any further consent on the part of the mortgagor, demise or enter into any agreement to demise the said lands, or any part thereof, upon any terms he thinks fit, subject nevertheless to the customs of the said manor, provided always that this power shall not be exercised until such time as he is by law empowered to sell, provided also that no lessee under the aforesaid power shall be bound to inquire whether such time has arrived, or be affected by notice that such

time has not arrived; and it is further agreed, that the said power may be exercised by the person who for the time being is by law empowered to sell. And it is further agreed that the mortgagee may, if he thinks fit, insure the said hereditaments in a sum not exceeding £ from loss or damage by fire, and the mortgagor hereby covenants to forthwith repay to the mortgagee such sum as may be charged for the premium on any such insurance.

In witness, &c.

(*See Notes to Precedent No. 24.*)

No. 26.

Mortgage of Leaseholds.

THIS INDENTURE OF MORTGAGE, made the day of , 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part, WITNESSETH, that in consideration of £ paid to the mortgagor by the mortgagee, of which sum the mortgagor hereby acknowledges the receipt, the mortgagor hereby covenants with the mortgagee to pay him, on the day of , the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also, as long after that day as any principal money remains due under this mortgage, to pay to the mortgagee interest thereon at the same rate by equal half-yearly payments on the day of , and the day of . AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the mortgagor, as beneficial owner, hereby conveys (*a*) to the mortgagee, All that, &c. (*parcels*), And all other the premises demised by a certain lease, dated , and made between , whereby the said lands were demised from the day of , for the term of years, at the yearly rent of , and subject to the lessee's covenants therein contained, To hold the same, together with all fixtures in and about the said premises belonging to the mortgagor

(*a*) The word conveyance, as defined by sec. 2, includes assignment and lease.

unto the mortgagee for the residue of the said term of years by the said lease granted, except the last three days thereof (*a*), subject to the proviso for redemption following (namely), that if the mortgagor, or any person claiming under him, shall, on the day of , pay to the mortgagor the sum of £ , and interest thereon, at the rate aforesaid, then the mortgagee or any person claiming under him, will, at the request and costs of the mortgagor, or the persons claiming under him, reconvey the premises to the mortgagor, or the persons claiming under him. And the mortgagor hereby covenants with the mortgagee as follows: That he, the mortgagor will not at any time hereafter grant, or enter into any agreement to grant, any lease of the lands before mentioned, or any part thereof, without the consent in writing of the mortgagee; and it is hereby agreed that the mortgagor shall not be entitled to redeem this present mortgage without first paying to the mortgagee any money that may be due to him on any other mortgage executed by the mortgagor, or by any person through whom he claims. And it is further agreed, that the mortgagee may at any time, without any further consent on the part of the mortgagor, demise or enter into any agreement to demise the said lands, or any part thereof, upon any terms he thinks fit provided always that this power shall not be exercised until such time as he is by law empowered to sell, provided also that no lessee under the aforesaid power shall be bound to inquire whether such time has arrived, or be affected by notice that such time has not arrived; and it is further agreed that the said power may be exercised by the person who for the time being is by law empowered to sell. And it is further agreed, that the mortgagee may, if he thinks fit, insure the said hereditaments in a sum not exceeding £ from loss or damage by fire, and the mortgagor hereby covenants to forthwith repay to the mortgagee such sum as may be charged for the premium on any such insurance. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the mort-

(*a*) It is always desirable to take a mortgage of leaseholds by way of demise. As the word "convey" also includes an assignment (sec. 2) if some days be not reserved, the mortgage will operate by way of assignment.

gagor doth hereby attorn and become tenant from quarter to quarter to the mortgagee in respect of the said premises, at a yearly rent of £ , by equal quarterly payments, the first payment to be made on the first day of the month next after any interest hereby secured shall have become in arrear; but all money received by the mortgagee for rent under the attornment hereinbefore contained shall be accepted in the first place in or towards satisfaction of the interest then in arrear. Provided always, that the attornment hereinbefore contained shall not render it compulsory on the mortgagee to collect the rent payable thereunder, and that he shall not be accountable to any subsequent incumbrancer for any rent that might have been recovered under such attornment. Provided also, that the mortgagee may at any time after he is by law empowered to sell, without any notice enter upon and take possession of the said land and premises, and determine the last-mentioned tenancy. (*a*) And lastly, it is hereby agreed that after a sale under the power given by law to a mortgagee, the mortgagor, or the person or persons in whom for the time being the said term of years granted by the said lease shall be vested, shall stand possessed of the lands sold for and during the last three days of the said term, in trust for the purchaser, to be conveyed as he may direct.

In witness, &c.

(*See notes to Precedent No.* 24).

No. 27.

Mortgage of Freeholds or Leaseholds in Paragraphs, with Variations of Provisions in Brackets.

(*Those unnecessary or inapplicable can be struck out.*)

THIS INDENTURE OF MORTGAGE, made the day of 18 , Between

(*a*) In the case of mortgage of leaseholds, in addition to the covenants for title, the further covenants that the lease is valid, and for payment of rent and performance of covenants, are implied against the mortgagor.

(hereinafter called the mortgagors), of the one part; and

(hereinafter called the mortgagees), of the other part, in consideration of the sum of £ paid to the mortgagors by the mortgagees [out of money belonging to them on a joint account], of which sum the mortgagors hereby acknowledge the receipt, WITNESSETH as follows—

1.—The mortgagors do jointly, and each of them doth severally, hereby covenant with the mortgagees to pay to them on the day of next, the sum of £ , with interest thereon in the meantime at the rate of £6 per cent. per annum, and to pay to them interest at the like rate on the principal sum for the time being owing on this security, on every day of and day of , such interest to be considered as accruing due from day to day. [Provided that if and whenever a half-year's interest at the rate of £5 per cent. per annum shall be paid upon the half-yearly day above appointed for payment thereof, or within one calendar month thereafter, the mortgagees shall accept the same in lieu of and satisfaction for the interest after the rate of £6 per cent. per annum, payable for that half-year under the above covenant, but without prejudice to their right to require payment of interest after the higher rate for any half-year in which interest shall not be paid within the time aforesaid.]

2.—The mortgagors, as beneficial owners, do, and each of them doth hereby convey unto the mortgagees, all and singular the lands, hereditaments and premises comprised in the schedule hereunder written To hold the same unto the mortgagees in fee simple *or* [for the unexpired residue (except the last days) of the term of years estate and interest created or arising in respect of the premises by virtue of the indenture of lease or under-lease thereof under which they are holden] [subject nevertheless to the under-lease thereof described in the second column of the said schedule], [subject nevertheless to an indenture of mortgage dated the day of , 18 , and made between the mortgagors of the one part and of the other part, for securing the

repayment of the sum of £ , and interest thereon at £ per cent. per annum, in manner therein mentioned.]

3.—Provided always, that if the mortgagors or any person claiming under him or them shall on the day of next, pay to the mortgagees the sum of £ , and interest thereon as aforesaid, then the mortgagees or the person claiming under them will, at the request and cost of the mortgagors or the person claiming under him or them, re-convey and surrender to the mortgagors or the persons claiming under him or them, the said mortgaged premises.

[4.—The mortgagors shall stand possessed of the said reversion of days, in trust for the purposes of this security, and shall convey and dispose of the same as the mortgagees may direct.]

5.—The mortgagors hereby covenant with the mortgagees as follows—That the mortgagors will not at any time hereafter grant or enter into any agreement to grant any lease of the mortgaged premises, or any part thereof, without the consent in writing of the mortgagees. And that the mortgagors shall not be entitled to redeem this present mortgage without first paying to the mortgagees any money that may be due to the mortgagees on any other mortgage executed by the mortgagors or by any person through whom they claim.

6.—The mortgagors further covenant with the mortgagees that during the continuance of this security all portions of the mortgaged premises which are capable of insurance shall be kept insured by the mortgagors, or otherwise, without expense to the mortgagees, in the joint names of the mortgagors and mortgagees, against damage by fire in the amount of not less than £ , in such office as the mortgagees shall approve. That the receipts for the premiums, and other payments (if any) in respect of the said insurance, shall be produced to the mortgagees within seven days after such premiums and other payments shall have respectively become due, or the mortgagees shall have required the production thereof. And that in case of the non-observance or non-performance of the said covenants to insure and produce receipts, or either of them, it shall be lawful

for, but in no respect incumbent on, the mortgagees to keep up any insurance for the time being subsisting, or to effect and keep up an insurance against fire in his or their own names, or otherwise, to such an amount as they may think fit. That the mortgagors shall forthwith repay to the mortgagees the moneys (whether demanded or not) which he or they shall have expended for any purpose hereby authorised, together with interest at the rate aforesaid from the date of outlay, and in the meantime such moneys and interest shall be a charge on the mortgaged premises. That the moneys received under any insurance shall be applied in reinstating the insured premises, unless such insurance shall have been effected or kept up by the mortgagees, in which case the moneys so received may, at his or their option, be applied either in reinstating the insured premises or in or towards payment of the moneys for the time being owing on this security, and in case of any deficiency of the insurance moneys for reinstating the insured premises such deficiency shall be made good by the mortgagors.

7.—The power of sale conferred upon mortgagees by "The Conveyancing and Law of Property Act, 1881," shall arise and be immediately exerciseable, not only in the cases provided for by Sec. 20 of the said Act, but also in the event of the mortgagors becoming subject to or taking or attempting to take the benefit of any Bankruptcy Act or Act for the Relief of Insolvent Debtors for the time being in force [and further in the event of the mortgagors committing or permitting any breach, non-observance or non-performance of any of the covenants of the indenture of lease or under-lease under which the mortgaged premises are holden.]

8.—The mortgagees may at any time after they are by law empowered to sell, demise or enter into any agreement to demise the lands, hereditaments and premises comprised in the said schedule, or any part thereof, upon any terms they think fit, but no lessee shall be bound to inquire whether such time has arrived, or be affected by notice that such time has not arrived.

[9.—The mortgagees do hereby attorn and become tenants from quarter to quarter to the mortgagees in respect of the land, heredita-

ments and premises mentioned in the said schedule, at the yearly rent of £ , by equal quarterly payments, the first payment to be made on the first day of the month next after any interest hereby secured shall have become in arrear. The attornment herein contained shall not render it compulsory on the mortgagees to collect the rent payable thereunder, and they shall not be accountable to any subsequent incumbrancer for any rent that might have been recovered under such attornment. The mortgagees may at any time, by notice in writing, forthwith determine the last-mentioned tenancy.]

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

(*See Notes to Precedents Nos.* 24 *&* 26.)

No. 28.

Mortgage of Freeholds and Leaseholds.

THIS INDENTURE OF MORTGAGE, made the . day of 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part, WITNESSETH, that in consideration of £ paid to the mortgagor by the mortgagee, of which sum the mortgagor hereby acknowledges the receipt, the mortgagor hereby covenants with the mortgagee to pay him, on the day of , the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also, as long after that day as any principal money remains due under this mortgage, to pay to the mortgagee interest thereon at the same rate by equal half-yearly payments on the day of , and the day of AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the mortgagor, as beneficial owner, hereby conveys to the mortgagee, Firstly, all, &c. (*freehold parcels*), Secondly, All that, &c. (*leasehold parcels*), And all other the premises

demised by a certain lease, dated , and made between , whereby the said lands were demised from the day of , for the term of years, at the yearly rent of , and subject to the lessee's covenants therein contained. To hold the same as to the land firstly described, unto and to the use of the mortgagee in fee simple, and as to the land secondly described, unto the mortgagee for the residue of the said term of years, by the said lease granted, except the last three days thereof, (*a*) subject to the proviso for redemption following (namely), that if the mortgagor, or any person claiming under him, shall, on the day of , pay to the mortgagee tho sum of £ , and interest thereon, at the rate aforesaid, then the mortgagee, or the person claiming under him, will, at the request and costs of the mortgagor, or the persons claiming under him, re-convey the premises to the mortgagor, or the persons claiming under him. And the mortgagor hereby covenants with the mortgagee as follows: That he, the mortgagor, will not at any time hereafter grant, or enter into any agreement to grant, any lease of the lands before mentioned, or any part thereof, without the consent in writing of the mortgagee, and it is hereby agreed that the mortgagor shall not be entitled to redeem this present mortgage without first paying to the mortgagee any money that may be due to him, on any other mortgage executed by the mortgagor, or by any person through whom he claims. And it is further agreed, that the mortgagee may at any time, without any further consent on the part of the mortgagor, demise or enter into any agreement to demise the said lands, or any part thereof, upon any terms he thinks fit, provided always that this power shall not be exercised until such time as he is by law empowered to sell, provided also that no lessee under the aforesaid power shall be bound to inquire whether such time has arrived, or be affected by notice that such time has not arrived; and it is further agreed, that the said power may be exercised by the person who for the time being is by law empowered to sell. And it is further agreed, that the mortgagee may, if he thinks fit, insure the said hereditaments in a sum not exceeding £ from loss or

(*a*) *See* Note to Precedent No. 26, p. 284.

damage by fire, and the mortgagor hereby covenants to forthwith repay to the mortgagee such sum as may be charged for the premium on any such insurance. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the mortgagor doth hereby attorn and become tenant from quarter to quarter to the mortgagee in respect of the said premises, at a yearly rent of £ , by equal quarterly payments, the first payment to be made on the first day of the month next after any interest hereby secured shall have become in arrear; but all money received by the mortgagee for rent under the attornment hereinbefore contained shall be accepted in the first place in or towards satisfaction of the interest then in arrear. Provided always, that the attornment hereinbefore contained shall not render it compulsory on the mortgagee to collect the rent payable thereunder, and that he shall not be accountable to a second mortgagee or any subsequent incumbrancer for any rent that might have been recovered under such attornment. Provided also, that the mortgagee may at any time after he is by law empowered to sell, without any notice, enter upon and take possession of the said land and premises, and determine the last-mentioned tenancy. And lastly, it is hereby agreed that after a sale under the power given by law to a mortgagee, the mortgagor or the person or persons in whom for the time being the said term of years granted by the said lease shall be vested, shall stand possessed of the lands sold, and secondly hereinbefore described, for and during the last three days of the said term, in trust for the purchaser, to be conveyed as he may direct. In witness, &c.

(*See notes to Precedent No.* 24).

No. 29.

THIS INDENTURE, made by way of statutory mortgage, the day of , 188 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part, Witnesseth, that in consideration of £ paid by the mortgagee to the mortgagor, of which sum he hereby acknowledges the receipt, the mortgagor hereby

covenants with the mortgagee to pay him on the day of next, the sum of £ , with interest thereon in the meantime at the rate of £5 per cent. per annum [*add proviso for reduction of rate, if needed*]. And also as long after that day as any principal money remains due under this mortgage to pay the mortgagee interest thereon at the same rate by equal half-yearly payments on the day of and the day of in every year. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, *A.B.*, as mortgagor and beneficial owner, hereby conveys to the mortgagee All that, &c. (*parcels*), To hold the same unto and to the use of the mortgagee in fee simple. Provided always, that if the mortgagor or any person claiming under him shall on the day of pay to the mortgagee the sum of £ and interest thereon at the rate aforesaid, then the mortgagee, or the persons claiming under him, will, at the request and costs of the mortgagor or the persons claiming under him, reconvey the premises to the mortgagor or the persons claiming under him. And the mortgagor hereby covenants with the mortgagee, That the mortgagor will not at any time grant or enter into any agreement to grant any lease of the premises or any part thereof exceeding a yearly tenancy without the consent in writing of the mortgagee. And it is hereby agreed that the mortgagor shall not be entitled to redeem this present mortgage without first paying to the mortgagee any money that may be due to the mortgagee on any other mortgage executed by the mortgagor [or by any person through whom he claims]. And it is further agreed that the mortgagee may at any time, without any further consent on the part of the mortgagor, demise or enter into any agreement to demise the said lands or any part thereof upon any terms he or they may think fit. Provided always that this power shall not be exercised until such time as a mortgagee is by law empowered to sell. And that no lessee under the aforesaid power shall be bound to inquire whether such time has arrived, or be affected by notice that such time has not arrived, and that the said power may be exercised by the person who for the time being is by law empowered to sell. And it is further agreed that the mortgagee may, if he or they shall think fit, insure the said buildings

in a sum not exceeding £ from loss or damage by fire. And the mortgagor hereby covenants with the mortgagee to forthwith repay the mortgagee such sums as may be charged from time to time for the premiums on any such insurance. And it is hereby expressly declared that six calendar months' (instead of three calendar months') written notice shall be required on either side before calling up or paying off the said principal sum, any statute to the contrary notwithstanding, but that in all other respects the statutory provisions as to exercising powers of sale shall apply. AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor doth hereby attorn and become tenant from year to year to the mortgagee in respect of the said premises at a yearly rent of £ by equal half-yearly payments, the first payment to be made on the first day of the month next after any interest hereby secured shall have become in arrear, but all money received by the mortgagee for rent under the attornment hereinbefore contained shall be accepted in or towards satisfaction of the interest then in arrear. Provided always, that the attornment hereinbefore contained shall not render it compulsory on the mortgagee to collect the rent payable thereunder, and that the mortgagee shall not be accountable to a second mortgagee, or any subsequent incumbrancer, for any rent that might have been recovered under such attornment. Provided also, that in case any half-yearly payment of interest or rent shall be in arrear for one calendar month, the mortgagee may at any time by notice in writing forthwith determine the last-mentioned tenancy.

In witness, &c.

No. 30.

Mortgage by Husband and Wife of Freehold Lands belonging to Wife. (*a*)

THIS INDENTURE OF MORTGAGE, made this day of 18 , between *A. B.*, of, &c. (*mortgagor*), and *C.*, his

(*a*) If the property is acquired by the wife after the 1st of January, 1883, the commencement of the Married Women's Property Act, 1882, or belongs to a woman married after that date, the husband will not be a necessary party to a mortgage of her freeholds.

wife, of the one part, and *D. E.*, of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of £ paid to *A. B.* and *C.*, his wife, by *D. E.*, of which sum *A. B.*, and *C.* his wife, hereby acknowledge the receipt, *A. B.*, and *C.*, his wife, hereby covenant (*a*) with *D. E.* to pay him on the day of the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also as long after that day as any principal money remains due under this mortgage, to pay to *D. E.*, interest thereon at the same rate by equal half-yearly payments, on the day of . AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, *A. B.* and *C.*, his wife, as beneficial owner, do by this deed, which is intended to be acknowledged by *C. B.*, pursuant to the statute in that behalf, convey unto *D. E.*, All, &c. (*parcels*), To hold the same unto and to the use of *D. E.* in fee simple, subject to the proviso for redemption following, namely, that if the said *C.*, or any person claiming under her, shall on the day of pay to the said *D. E.* the sum of £ and interest thereon at the rate aforesaid, then the said *D. E.*, or the person claiming under him will, at the request and cost of the person making such payment, re-convey the premises to the said *C.*, or the persons claiming under her. And *A. B.* and *C.* his wife. (*Continue as in Precedent No.* 24.)

In witness, &c.

No. 31.

Mortgage of an Equity of Redemption of Freeholds.

THIS INDENTURE OF MORTGAGE, made the day of , 18 between *A. B.*, of, &c. (hereinafter called the mortgagor) of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part. Whereas, by an indenture

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(*a*) By sec. 7, the covenants for title are implied against the wife, so the covenant for repayment by her is also inserted, and under the Married Women's Property Act, 1882, will be binding upon her to the extent of her separate estate.

of mortgage dated, &c., and made between the mortgagor of the one part, and *E. F.*, of the other part, the mortgagor, in consideration of the sum of £ , conveyed the lands hereinafter described unto and to the use of *E. F.* in fee simple, subject to a proviso therein contained for the redemption of the land upon payment by the mortgagor unto *E. F.* of the sum of £ , with interest for the same after the rate of £ per cent. per annum, on the day of . And whereas, the said sum of £ still remains owing to *E. F.*, with interest for the same from the day of . NOW THIS INDENTURE WITNESSETH, that in consideration of £ (*continue as in Precedent No.* 24, *to end of parcels*) To hold the same unto and to the use of the mortgagee in fee simple, subject to the hereinbefore-recited indenture, and the principal sum and interest thereby secured, and subject also to the proviso for redemption (*continue as in Precedent No.* 24).

In witness, &c.

No. 32.

Mortgage of Leaseholds by Executor.

THIS INDENTURE OF MORTGAGE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part. Whereas, by an indenture of lease, dated, &c., and made between *E. F.*, of the one part, and *G. H.*, of the other part, the lands hereinafter described were demised to *G. H.* for the term of years, from the day of , at the yearly rent of £ , and subject to the lessee's covenants and conditions therein contained. And whereas, *G. H.* died on the day of , having by his Will, bearing date the day of , appointed the mortgagor sole executor, and on the day of , probate of the said Will was duly granted by the Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice to the mortgaor. And whereas, the mortgagor as such executor as

aforesaid, having occasion for the sum of of £ has requested the mortgagee to advance him such sum, which the mortgagee has agreed to do on having the repayment thereof with interest secured to him in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £ paid to the mortgagor as such executor as aforesaid, by the mortgagee, of which sum the mortgagor hereby acknowledges the receipt, the mortgagor, as such executor as aforesaid, hereby conveys to the mortgagee, All, &c. (*parcels*), And all other the premises comprised in the said lease, To hold the same unto the mortgagee for the residue of the said term of years by the said lease granted (except the last three days thereof). Provided always, that if the mortgagor or other the personal representative of *G. H.* for the time being, shall, on the day of , pay to the mortgagee the sum of £ with interest thereon in the meantime at the rate of per cent. per annum, then the mortgagee, or the person claiming under him, will, at the request and costs of the mortgagor, or such other personal representative as aforesaid, re-convey the land to the mortgagor or such other personal representative as aforesaid. And it is hereby declared, but not so as to create any personal liability on the part of the mortgagor, that if the said sum of £ shall not be paid on the said day of next, interest thereon at the rate aforesaid shall, as long as any principal money remains due under this mortgage, be payable to the said mortgagee by equal half-yearly payments on the day of , and the day of in every year (*a*) (*Insert agreement not to grant leases without consent, and provision against redeeming without payment of other mortgages executed as executor, and power for mortgagee to demise on any terms, and to insure as in Precedent No.* 24, *and agreement to hold last three days in trust for purchaser as in Precedent No.* 26.)

In witness, &c.

(*a*) The covenant by the mortgagor as executor, against incumbrances, is implied in sec. 7.

No. 33.

Mortgage of a Mortgage of Freeholds.

THIS INDENTURE OF MORTGAGE, made the day of , 18 , between *A. B.*, of, &c. (*mortgagor*), of the one part, and *C. D.*, of, &c. (*mortgagee*), of the other part. (*Recite mortgage, and that money still due, as in Precedent No.* 31.) NOW THIS INDENTURE WITNESSETH, that in consideration of £ (*continue as in Precedent No.* 24). AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, *A. B.*, as beneficial owner under the said indenture of mortgage, doth hereby convey to *C. D.*, All that the said principal sum of £ , now due to *A. B.* upon the security of said indenture of mortgage, and all interest now or henceforth to become due for the same, and the benefit of all the covenants and powers contained in the said indenture, or by law vested in a mortgagee, together with full power to demand, sue for, and receive, and to give receipts for the said principal sum and interest in the name of *A. B.*, or otherwise. To receive and take the said principal sum and interest, subject to the proviso for redemption hereinafter contained. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, *A. B.*, as beneficial owner, hereby conveys unto *C. D.* All and singular the lands conveyed by the recited indenture of mortgage, To hold the same unto and to the use of *C. D.*, in fee simple, subject to such equity of redemption as the same are now subject to by virtue of the said indenture of mortgage, and also subject to the proviso for redemption following, namely (*insert proviso for redemption as in Precedent No.* 24). And *A. B.* hereby covenants with *C. D.*, that the said sum of £ is still due from the mortgagor to him, *A. B.* Provided always, and it is hereby agreed, that it shall not be incumbent on *C. D.* to sue for or require payment of the said principal sum and interest, or any part thereof, nor shall he be responsible for any loss that may arise by reason of his omission to enforce any of the securities for the said principal sum and interest.

In witness, &c.

No. 34.

Mortgage of a Legacy.

THIS INDENTURE OF MORTGAGE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), of the one part, and *C. D.*, of, &c. (hereinafter called the mortgagee), of the other part. Whereas, *E. F.*, late of , died on the day of , and by his Will, dated , gave to the mortgagor the sum of £ , and the said Will was, on the day of, proved in the Probate Registry of the Probate, Divorce and Admiralty Division of the High Court of Justice. And whereas, the said legacy has not yet been paid to the mortgagor. NOW THIS INDENTURE WITNESSETH, that in consideration of £ (*continue as in Precedent No.* 24). AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the mortgagor, as beneficial owner, hereby conveys to the mortgagee the said legacy of £1,000, given by the said Will to the mortgagor, and full power to sue for, receive, and give receipts for the said legacy in the name of the mortgagor, or otherwise; to receive the said legacy unto the mortgagee, upon trust to apply the same in the manner prescribed by law (*a*).

In witness, &c.

No. 35.

Further Charge.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the mortgagor), and *C. D.*, of, &c. (hereinafter called the mortgagee), and supplemental to an indenture of mortgage dated the day of , and made between the same parties, for securing the sum of £ , and interest at per cent. per annum, on the property and land therein mentioned, WITNESSETH, that in consideration of the further sum of

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(*a*) Sec. 22 provides for the proper application of money received by a mortgagee from the proceeds of securities comprised in the mortgage.

£ paid to the mortgagor by the mortgagee, of which sum the mortgagor hereby acknowledges the receipt, the mortgagor hereby covenants with the mortgagee to pay him on the day of the said sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, and also, so long after that day as any principal money remains due under this mortgage, to pay to the mortgagee interest thereon at the same rate, by equal half-yearly payments, on the day of and the day of , and further, that all the lands comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to the mortgagee of the sum of £ , and the interest thereon hereinbefore covenanted to be paid, as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

No. 36.

Form of Bill of Sale.

THIS INDENTURE, made the day of , 18 , between *A. B.*, of, &c., of the one part, and *C. D.*, of, &c., of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowleges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.*

[*add witness' name, address and description*].

No. 37.

Transfer of Mortgage of Freeholds, Mortgagor joining.

THIS INDENTURE, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the transferor), of the first part, *C. D.*, of, &c. (hereinafter called the mortgagor), of the second part, and *E. F.*, of, &c. (hereinafter called the transferee), of the third part. Whereas, by an indenture of mortgage dated, &c., and made between the mortgagor of the one part, and the transferor of the other part, the mortgagor, in consideration of the sum of £ , conveyed the lands hereinafter described unto and to the use of the transferor, in fee simple, subject to a proviso therein contained for the redemption of the land, upon payment by the mortgagor unto the transferor of the sum of £ , with interest for the same after the rate of £ per cent. per annum, on the day of . And whereas, the said sum of £ still remains owing to the transferor, with interest for the same from the day of . And whereas, the transferee has agreed to pay to the transferor the sum of £ , on having a transfer of the said mortgage debt and of the interest thereof and of the securities for the same in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ , paid to the transferor by the transferee, of which sum the transferor hereby acknowledges the receipt, the transferor, as beneficial owner, hereby conveys unto the transferee, All that the said principal sum of £ , secured by the hereinbefore-recited indenture as aforesaid, and all interest henceforth to become due in respect of the same, and the

full benefit of the covenants and other powers and provisions contained in the same indenture, for securing the payment of the said principal sum and interest, To receive and take the said principal sum and interest unto the transferee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the transferor, as mortgagee, doth hereby convey, and the mortgagor, as beneficial owner, doth hereby convey and confirm unto the transferee, All, &c. (*parcels*), To hold the same unto and to the use of the transferee in fee simple, subject to such equity of redemption as is now subsisting therein under the hereinbefore-recited indenture of mortgage (*a*).

In witness, &c.

No. 38.

Transfer of Mortgage of Freeholds, Mortgagor not joining.

THIS INDENTURE OF TRANSFER, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the transferor), of the one part, and *C. D.*, of, &c. (hereinafter called the transferee), of the other part. Whereas, by an indenture of mortgage dated, &c., and made between *E. F.*, of the one part, and the transferor, of the other part, *E. F.*, in consideration of the sum of £ , conveyed the lands hereinafter described unto and to the use of the transferor, in fee simple, subject to a proviso therein contained for the redemption of the land, upon payment by *E. F.* unto the transferor of the sum of £ , with interest for the same after the rate of £ per cent. per annum, on the day of . And whereas, the said sum of £ still remains owing to the transferor, with interest for the same from the day of . And whereas, the transferee has agreed to pay to the transferor the sum of £ , on having a transfer of the said mortgage debt, and of the interest thereof, and of the securities for the same in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in consideration of £ paid to the transferor by the trans-

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(*a*) The mortgagee's covenant against incumbrances is implied (sec. 7).

feree, of which sum the transferor hereby acknowledges the receipt, the transferor, as beneficial owner, doth hereby convey unto the transferee, all that the said principal sum of , secured by the hereinbefore-recited indenture as aforesaid, and all interest henceforth to become due in respect of the same, and the full benefit of the covenants and other powers and provisions contained in the same indenture, for securing the payment of the said principal sum and interest, To receive and take the said principal sum and interest unto the transferee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the transferor, as mortgagee, doth hereby convey to the transferee, All, &c. (*parcels*), To hold the same unto and to the use of the transferee, in fee simple, subject to such equity of redemption as is now subsisting in the said premises under the hereinbefore-recited indenture of mortgage.

In witness, &c.

No. 39.

Transfer of Mortgage of Freeholds, a further sum being advanced to the Mortgagor.

THIS INDENTURE OF TRANSFER, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the transferor), of the first part, *C. D.*, of, &c. (hereinafter called the mortgagor), of the second part, and *E. F.*, of, &c. (hereinafter called the transferee), of the third part. Whereas, by an indenture of mortgage dated, &c., and made between the mortgagor of the one part, and the transferor of the other part, the mortgagor, in consideration of the sum of £ , conveyed the lands hereinafter described unto and to the use of the transferor, in fee-simple, subject to a proviso therein contained for the redemption of the land upon payment by the mortgagor unto the transferor of the sum of £ , with interest for the same after the rate of £ per cent. per annum, on the day of . And whereas the said sum of £ still remains owing to the transferor, with interest for the same from the day of . And whereas, the trans-

feree has agreed to pay to the transferor the sum of £ , on having a transfer of the said mortgage debt and interest, and to lend to the mortgagor the further sum of £ . NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ paid to the transferor by the transferee, of which sum the transferor hereby acknowledges the receipt, the transferor, as beneficial owner, doth hereby convey unto the transferee the said principal sum of £ and the interest secured by the hereinbefore-recited indenture, to receive and take the said principal sum and interest unto the transferee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration of the said sum of £ paid to the transferor by the transferee, of which sum the transferor hereby acknowledges the receipt, and also in consideration of £ paid to the mortgagor by the transferee, of which sum the mortgagor hereby acknowledges the receipt, the transferor, as mortgagee, doth hereby convey, and the mortgagor, as beneficial owner, doth hereby convey and confirm to the transferee, All, &c. (*parcels*), To hold the same unto and to the use of the transferee in fee simple, to the intent that the same shall be a security to the transferee for the payment of the principal money and interest hereinbefore conveyed, and also of the further principal sum of £ and interest as hereinafter mentioned, and that the powers and provisions contained in the said indenture of mortgage shall extend to the said further sum of £ and the interest thereon. And the mortgagor hereby covenants with the transferee to pay to the transferee on the day of , in addition to the principal sum and interest mentioned in the said mortgage, the sum of £ with interest thereon in the meantime at the rate of £ per cent. per annum, computed from the date hereof, and also as long after that day as any principal money remains due, then to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the day of , and the day of in every year.

In witness, &c.

feree, of which sum the transferor hereby acknowledges the receipt, the transferor, as beneficial owner, doth hereby convey unto the transferee, all that the said principal sum of , secured by the hereinbefore-recited indenture as aforesaid, and all interest henceforth to become due in respect of the same, and the full benefit of the covenants and other powers and provisions contained in the same indenture, for securing the payment of the said principal sum and interest, To receive and take the said principal sum and interest unto the transferee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, the transferor, as mortgagee, doth hereby convey to the transferee, All, &c. (*parcels*), To hold the same unto and to the use of the transferee, in fee simple, subject to such equity of redemption as is now subsisting in the said premises under the hereinbefore-recited indenture of mortgage.

In witness, &c.

No. 39.

Transfer of Mortgage of Freeholds, a further sum being advanced to the Mortgagor.

THIS INDENTURE OF TRANSFER, made the day of 18 , between *A. B.*, of, &c. (hereinafter called the transferor), of the first part, *C. D.*, of, &c. (hereinafter called the mortgagor), of the second part, and *E. F.*, of, &c. (hereinafter called the transferee), of the third part. Whereas, by an indenture of mortgage dated, &c., and made between the mortgagor of the one part, and the transferor of the other part, the mortgagor, in consideration of the sum of £ , conveyed the lands hereinafter described unto and to the use of the transferor, in fee-simple, subject to a proviso therein contained for the redemption of the land upon payment by the mortgagor unto the transferor of the sum of £ , with interest for the same after the rate of £ per cent. per annum, on the day of . And whereas the said sum of £ still remains owing to the transferor, with interest for the same from the day of . And whereas, the trans-

feree has agreed to pay to the transferor the sum of £ , on having a transfer of the said mortgage debt and interest, and to lend to the mortgagor the further sum of £ . NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ paid to the transferor by the transferee, of which sum the transferor hereby acknowledges the receipt, the transferor, as beneficial owner, doth hereby convey unto the transferee the said principal sum of £ and the interest secured by the hereinbefore-recited indenture, to receive and take the said principal sum and interest unto the transferee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration of the said sum of £ paid to the transferor by the transferee, of which sum the transferor hereby acknowledges the receipt, and also in consideration of £ paid to the mortgagor by the transferee, of which sum the mortgagor hereby acknowledges the receipt, the transferor, as mortgagee, doth hereby convey, and the mortgagor, as beneficial owner, doth hereby convey and confirm to the transferee, All, &c. (*parcels*), To hold the same unto and to the use of the transferee in fee simple, to the intent that the same shall be a security to the transferee for the payment of the principal money and interest hereinbefore conveyed, and also of the further principal sum of £ and interest as hereinafter mentioned, and that the powers and provisions contained in the said indenture of mortgage shall extend to the said further sum of £ and the interest thereon. And the mortgagor hereby covenants with the transferee to pay to the transferee on the day of , in addition to the principal sum and interest mentioned in the said mortgage, the sum of £ with interest thereon in the meantime at the rate of £ per cent. per annum, computed from the date hereof, and also as long after that day as any principal money remains due, then to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the day of , and the day of in every year.

In witness, &c.

No. 40.

Re-conveyance of Freeholds or Leaseholds.

THIS INDENTURE OF RE-CONVEYANCE, made the day of 18 , between *A. B.*, of, &c. (*mortgagee*), of the one part, and *C. D.*, of, &c. (*mortgagor*), of the other part. Whereas, by an indenture of mortgage, dated the day of and made between *C. D.*, of the one part, and *A. B.*, of the other part, the lands and premises situate, &c., and therein more particularly described, were conveyed by the said *C. D.* unto and to the use of the said *A. B.*, for securing the sum of £ and interest. NOW THIS INDENTURE WITNESSETH, that in consideration of the said sum of £ , and all interest thereon, paid to *A. B.*, of which sum and interest he hereby acknowledges the receipt, *A. B.*, as mortgagee, doth hereby convey to *C. D.*, All the land and premises mentioned in the said indenture of mortgage, To hold the same unto and to the use of *C. D.* in fee simple (*or if leaseholds*, for the residue of the term created by the indenture of lease, mentioned in the said indenture of mortgage), discharged from all principal money and interest, secured by and from all claims and demands, under the said indenture of mortgage.

In witness, &c.

No. 41.

Lease of a House.

THIS INDENTURE, made the day of , 18 , Between , of , in the county of , hereinafter called the lessor, of the one part, and , of , in the county of , hereinafter called the lessee, of the other part, WITNESSETH, that in consideration of £ to the lessor paid by the lessee, the receipt whereof the lessor doth hereby acknowledge, and of the rent and covenants hereinafter reserved and contained on the part of the lessee, to be paid, observed, and performed, the lessor doth hereby demise unto the lessee, All, &c., (*parcels*), TO HOLD the said premises unto the lessee, from the day of for the term of years, YIELDING AND PAYING therefor during the said term hereby granted the yearly

rent of £ , by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, the first of such payments to be made on the day of next, and the last quarterly payment, to be made in advance, on the day of next, immediately preceding the expiration of the said term, the said rent to be paid clear of all deductions whatsoever. And the lessee doth hereby covenant with the lessor, that the lessee will from time to time, during the said term hereby granted, pay unto the lessor the said yearly rent of £ , by equal quarterly payments, on the days and in manner aforesaid. And also will, during the continuance of the said term, pay the land tax (if any), sewers rate, drainage rate, local board of health rate, tithe rent charge, and all other rates, taxes and outgoings whatsoever, parliamentary, district, parochial or otherwise, which during the said term may be taxed or imposed on, or in respect of the said demised premises, or upon the landlord or tenant in respect thereof (except the landlord's property tax). And also will throughout the said term, at his own expense, without being thereunto required, well and sufficiently repair, maintain and keep the said premises and all fixtures and additions thereto, in good and substantial repair and condition. And particularly will paint twice over with good oil colours, and in a workmanlike manner, in every third year of the said term, all the outside ironwork, and other work previously or usually painted, and in every seventh year all the inside wood, iron, or other work previously or usually painted. And also that it shall be lawful for the lessor, his agent or surveyor, with or without workmen or others, twice or oftener in every year during the said term, at all reasonable times, to enter into the said premises, and to inspect, and to give or leave notice in writing upon the said premises of all defects, decays, and wants of reparation which from time to time shall be there found, to or for the lessee to repair and amend the same; and that the lessee will, within the space of three calendar months next after every or any such notice, well and sufficiently repair and amend the same accordingly (*a*). And further,

(*a*) By sec. 14, a lessor cannot bring an action for breach of any covenant (with one or two exceptions) without first serving a notice requiring the breach

that the lessee will not, during the said term hereby granted, use or suffer the said premises or any part thereof to be used for any art, trade, or business whatsoever, without the license or consent in writing of the lessor for that purpose first obtained, but will use the same as a private dwelling-house only. And moreover, that the lessee will not, during the term hereby granted, assign, underlet, or part with the possession of the said premises, or any part thereof, or do or commit any act or thing whereby or by means whereof the said premises or any part thereof may be assigned or otherwise disposed of, or the possession thereof parted with to any person or persons whomsoever, for the whole or any part of the said term (except the letting part of the said messuage or dwelling-house as offices or lodgings), without the consent in writing of the lessor first had and obtained for that purpose (*a*). And further that the lessee will, immediately after the execution of these presents, insure, and during this demise keep insured, the said premises from accident by fire in the Insurance Office, or in some office of insurance in London or Westminster, to be approved of by the lessor, in the joint names of the lessor and lessee for the time being, in the sum of £ at the least, and, on the request of the lessor, produce to him the policy and the receipts for the premiums of such insurance(*b*). And that all moneys to be received under any such insurance as aforesaid shall be forthwith expended in or towards rebuilding or reinstating the said premises and not otherwise. And that he the lessee will advance and pay such further sum or sums of money as shall be necessary or sufficient for rebuilding or reinstating the said premises to the satisfaction of the lessor. And also will at the expiration, or sooner determination of the said term, deliver up to the lessor the said premises, and all new fixtures and

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to be remedied. A notice given under this covenant, in order to avoid the necessity of having to give a second notice, should be expressed to be both under the lease and under the Act (*see* Form of Notice, p. 318).

(*a*) The Act gives no relief against breach of this covenant. (Sec. 14, sub-sec. 6.)

(*b*) Relief for breach of the covenant to insure is now to be had under sec. 14. The enactments under which, prior to the Act, relief was obtainable, are repealed. (Sec. 14, sub-sec. 7.)

additions thereto, in such good and substantial repair and condition as shall be consistent with the due performance of the several covenants hereinbefore contained. Provided always, that if the said yearly rent of £ or any part thereof shall be unpaid for the space of 21 days, whether the same shall have been legally demanded or not, (*a*) or if the lessee shall commit any breach of the covenants hereinbefore contained, and on h part to be performed, or shall, while in possession of the said premises, become bankrupt or suffer his interest in the said premises to be taken in execution, (*b*) then, and in any of the said cases, the lessor may re-enter upon the said premises or any part thereof in the name of the whole, and immediately thereupon this demise shall absolutely determine. And the lessor doth hereby covenant with the lessee, that the lessee, paying the said rent and observing and performing all the covenants hereinbefore contained, shall and may peaceably and quietly hold and enjoy the said premises during the said term without any interruption or disturbance whatsoever of, from, or by the lessor, or any other person or persons rightfully claiming under him, Provided lastly, and it is hereby declared and agreed between the said parties hereto, that if the lessor or the lessee shall be desirous of determining the said term hereby granted at the end of the first years or, the first years thereof, and of such desire notice in writing shall be given by, or on behalf of, the lessor to the lessee, or left at h last known place of abode, or at or upon the said demised premises, or by or on behalf of the lessee to the lessor, or left at h last-known place of abode calendar months at least before the expiration of such years or years (as the case may be), then and in such case the said term of years hereby granted shall accordingly cease and determine at the expiration of such years or years respectively in like manner as if the said term hereby granted had expired by effluxion of time, or as if this present demise had originally been for or years only instead of the said

(*a*) The law relating to re-entry, or forfeiture, or relief in case of non-payment of rent, is not affected by the Act. (Sec. 14, sub-sec. 8.)

(*b*) The section giving relief does not extend to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest. (Sec. 14, sub-sec. 6.)

term of years (without prejudice nevertheless to any right of action or other remedy which may then have accrued in respect of the breach of all or any of the several covenants and agreements herein contained).

In witness, &c.

No. 42.

Building Lease.

THIS INDENTURE, made the day of , 18 , BETWEEN , of , in the county of, , hereinafter called the lessor, of the one part, and , of , in the county of , hereinafter called the lessee, of the other part, WITNESSETH, that in consideration of the rent and covenants hereinafter reserved and contained, on the part of the lessee, to be paid, observed and performed, the lessor doth demise unto the lessee, All, &c. (*parcels*), as the same premises are delineated and described as to the abuttalsand linear dimensions thereof in the plan drawn in the margin hereof, and therein coloured , TO HOLD unto the lessee from the day of , 18 for the term of years from thence next ensuing and fully to be complete and ended, YIELDING AND PAYING therefor during the said term hereby granted the yearly rent of £ , by four equal quarterly payments on the day of , the day of , the day of , and the day of in every year, the first of such payments to be made on the day of now next, and the last quarterly payment to be made in advance on the day of next immediately preceding the expiration of the said term, the said rent to be paid clear of all deductions whatsoever. And the lessee doth hereby covenant with the lessor, that he the lessee will from time to time during the said term hereby granted pay unto the lessor the said yearly rent of £ by equal quarterly payments on the days and in manner aforesaid. And also will, during the continuance of the said term, pay or cause to be paid the land tax (if any), sewer rate, drainage rate, local board of health rate, tithe rent charge, and all other taxes, rates and outgoings whatsoever, parliamentary, district, parochial or otherwise, which during the

said term may be taxed, rated or imposed on or in respect of the said hereby demised premises, or upon the landlord or tenant in respect thereof (except the landlord's property tax). And also will at h own expense, within years from the said day of 18 , erect and build upon the said parcel of ground, and according to plans and elevations to be first approved of by the lessor or h agent, not less than and not more than good and substantial dwelling-houses, with proper and sufficient outbuildings and conveniences thereto. And will expend in the erection of each such house £ at the least, and will construct and build all the said houses, erections and buildings throughout, of good sound bricks, set in good lime mortar, and of good oak or fir timber, and roofed with good slates or tiles in a good and workmanlike manner. And also will at h own expense, without being thereunto required throughout the said term, well and sufficiently maintain and keep in good and tenantable repair the said dwelling-house , and all other buildings which shall be built upon the said parcel of ground. And at the like expense keep in good order all sinks, privies and drains belonging to or draining the same. And particularly will paint with good oil colours and in a workmanlike manner in every third year of the said term, all the outside wood and ironwork, and other work previously or usually painted, or which ought to be painted, and in every seventh year all the inside wood, iron, or other work previously or usually painted, or which ought to be painted, and colour the ceilings once in every seventh year of the said term. And also that it shall be lawful for the lessor and h agent or surveyor, with or without workmen or others, twice or oftener in every year during the said term, at all reasonable times, to enter into the said premises or any part thereof to inspect, and give or leave notice in writing upon the said premises of all defects, decays and wants of reparation which from time to time shall be there found, to or for the lessee to repair and amend the same, and that h the lessee will, within the space of three calendar months next after every or any such notice, well and sufficiently repair and amend the same accordingly (*a*). And further, that he

(*a*) *See* note (*a*) to Precedent No. 41, *ante*, p. 305.

the lessee shall not, during the said term hereby granted, use or suffer the said premises or any part thereof, or any buildings to be erected as aforesaid, to be used for any art, trade or business whatsoever without the license or consent in writing of the lessor for that purpose first obtained, but will use all dwelling-houses and buildings now or hereafter to be erected on the said piece or parcel of ground only as private dwelling-houses, and will use the residue of the said piece or parcel of ground only as the site of the offices, outbuildings, gardens, pleasure grounds and other appurtenances to such dwelling-houses and buildings to be so used as aforesaid. And also will not do or suffer to be done anything on the said premises which may be or grow to the injury or annoyance of the lessor or h tenants or the occupiers of any adjoining premises. And also that he the lessee will, upon every assignment or under-lease of the said premises or any part thereof, within one month after the execution of such assignment or under-lease, give to the lessor's solicitor notice in writing thereof, and will produce the same to such solicitor for registration, and will pay to the said solicitor a fee not exceeding for such registration. And further, that he the lessee will insure from accident by fire in the Insurance Office, or in some other office of insurance in London or Westminster, to be approved of by the lessor, in the joint names of the lessor and lessee for the time being, each of the dwelling-houses now or hereafter to be erected as aforesaid so soon as the same shall be roofed in, and until completion, in the sum of £ at the least. And upon completion of each of the said messuages, and of the offices and outbuildings in connection therewith, will insure the whole in such office as aforesaid for two-thirds at least of the full value thereof, and will afterwards keep the same dwelling-house, offices, and outbuildings so insured as last aforesaid throughout the said term (*a*). And also will at all times, on demand, produce to the lessor the receipts for the current year's premiums and other sums payable in respect of every such insurance. And that all moneys to be received under any such insurance shall be forthwith expended in or towards rebuilding, or substantially repairing and reinstating the said premises and not

(*a*) *See* note (*b*) to Precedent No. 41, *ante*, p. 306.

otherwise. And that he, the lessee, will advance and pay such further sum or sums of money as shall be necessary or sufficient for rebuilding or reinstating the said premises to the satisfaction of the lessor. And also will at the expiration or other sooner determination of the said term deliver up to the lessor the said premises and all the dwelling-houses and erections which shall have been erected thereon during the said term, and all fixtures thereto, in such good and substantial repair and condition as shall be consistent with the due performance of the several covenants hereinbefore contained. Provided always, that if the said yearly rent of £ or any part thereof shall be unpaid for the space of 21 days, whether the same shall have been legally demanded or not, or if the lessee shall commit any breach of the covenants hereinbefore contained and on h part to be performed, then and in either of the said cases the lessor may re-enter upon the said premises or any part thereof in the name of the whole, and immediately thereupon this demise shall absolutely determine (*a*). And the lessor doth hereby covenant with the lessee, that the lessee paying the said rent and observing and performing all the covenants hereinbefore contained, shall and may peaceably and quietly have, hold and enjoy all and singular the said premises during the said term hereby granted, without any interruption or disturbance whatsoever of, from, or by the lessor or any other person or persons rightfully claiming under h .

In witness, &c.

No. 43.

Marriage Settlement.

Settlement by intended wife of a sum of stock. Investment clause. Income to be paid to wife and husband successively for life, and then to issue as wife shall appoint in default for issue equally. Hotchpot clause. Clause as to appointing new trustees.

THIS INDENTURE, made the day of 188 , between *A. B.*, of (hereinafter called the husband), of

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(*a*) *See* note (*b*) to Precedent No. 41, *ante*, p. 307.

the first part, *C. D.*, of (hereinafter called the wife), of the second part, and *E. F.*, of and *G. H.*, of (hereinafter called the trustees), of the third part. Whereas a marriage is intended shortly to be solemnized between the husband and wife, and upon the treaty therefore it was agreed that the wife should settle the sum of £ New Three per cent. Bank Annuities upon the trusts and in manner hereinafter expressed, and she has accordingly transferred the said stock into the names of the said trustees. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, it is hereby agreed and declared that the trustees shall stand possessed of the said sum of £ New Three per cent. Bank Annuities in trust for the wife until the said intended marriage, and after the solemnization of the said intended marriage, either to allow the said railway shares to remain unaltered in their present state of investment, or, with the consent of the husband and wife during their joint lives, and of the survivor of them during his and her life, and after the death of such survivor, at the discretion of the trustees, to sell and convert into money all or any part of the said shares, and invest the moneys thence arising in the names of the trustees in any of the Government stocks or funds of the United Kingdom, or of the United States of America, or in any stocks or funds guaranteed by either of the said Governments, or in any stocks or bonds issued by any municipality in England, or by the Metropolitan Board of Works, or in debentures or first mortgage bonds of any English or American railway Company paying a dividend out of traffic earnings upon its ordinary shares or stock, or upon mortgage of any landed property in England, Scotland or Wales, provided the same is either freehold or copyhold, and that the sum advanced thereon does not exceed three-fifths of the value thereof, exclusive of minerals, but always so as to yield a regular yearly income, and may from time to time, with such consent and at such discretion as aforesaid, vary such investments for others of any kind hereby authorised, and shall hold the same (hereinafter called the trust funds) upon trust, to pay the income as received during the joint lives of the husband and wife to the wife for her separate use, but without power of anticipation, and after her death then upon

trust for the husband for life, and after his death in trust for all or any of such one or more of the issue of the said intended marriage as the wife shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, in trust for all or any such one or more of the children of the said marriage as shall attain the age of 21 years, in equal shares. Provided always, that no child who or whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappropriated part of the trust funds without bringing the share appropriated to him or her or his or her issue into hotchpot. Provided also that the trustees may at any time or times, with the consent in writing of the wife, and after her death in their discretion, raise any part or parts not exceeding in the whole two-thirds of the then expectant presumptive or vested share of any child or issue under the trusts hereinafter declared, and apply the same for his or her advancement or benefit. And it is hereby declared that if there shall be no child of the said marriage that shall attain the age of 21 years, then subject to the trusts hereinbefore declared, the trustees shall hold the trust funds, and the income thereof, in trust for such persons and for such purposes as the wife shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, in trust for such person or persons as under the statutes for the distribution of the effects of intestates would have become entitled thereto at the decease of the wife had she died possessed thereof, and without having been married, in the shares in which they would have been entitled under the said statutes. And it is hereby further agreed that the power of appointing a new trustee shall be exerciseable by the wife during her life, and that upon every appointment of trustees, the number of trustees may be increased or lessened, but not to be less than two.

In witness, &c.

No. 44.

Marriage Settlement.

Settlement of property by third person on a wife for life, then on husband for life, with remainder to children, and by the husband of present furniture, with covenant to settle after-acquired furniture.

THIS INDENTURE, made the day of 18 , Between *A. B.* of (hereinafter called the husband), of the first part, *C. D.*, of (hereinafter called the wife), of the second part, *E. F.*, of (hereinafter called the settlor), of the third part, and *G. H.* and *I. J.*, of (hereinafter called the trustees), of the fourth part.

Whereas, a marriage is intended to be solemnised Between the husband and wife, and whereas it has been agreed by all parties hereto upon the treaty for the marriage that the settlor shall transfer to the trustees the shares hereinafter more particularly described to be held by them upon the trusts hereinafter described, and further that the husband shall assign to the trustees the articles of plate, furniture, and effects, mentioned in the schedule hereto (including therein all wedding presents that the husband and wife may receive), and shall covenant in the manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, the settlor, as beneficial owner, doth hereby transfer and convey to the trustees all those shares in the , numbered , and respectively now standing, and all dividends payable and to be payable on the same and all rights arising thereout. Together with power for the trustees to sue and give receipts and in respect to the same. To hold the same in trust for the settlor until the said intended marriage, and after the solemnization of the said intended marriage, either to allow the said railway shares to remain unaltered in their present state of investment, or, with the consent of the husband and wife during their joint lives, and of the survivor of them during his and her life, and after the death of such survivor, at the discretion of the trustees, to sell and convert into money all or any part of the said shares, and invest the moneys thence arising in the names of the trustees in any of the Government stocks or funds

of the United Kingdom, or of the United States of America, or in any stocks or funds guaranteed by either of the said Governments, or in any stocks or bonds issued by any municipality in England, or by the Metropolitan Board of Works, or in debentures or first mortgage bonds of any English or American railway Company paying a dividend out of traffic earnings upon its ordinary shares or stock, or upon mortgage of any landed property in England, Scotland, or Wales, provided the same is either freehold or copyhold, and that the sum advanced thereon does not exceed three-fifths of the value thereof exclusive of minerals, but always so as to yield a regular yearly income, and may from time to time with such consent, and at such discretion as aforesaid, vary such investments for others of any kind hereby authorised, and shall hold the same (hereinafter called the trust funds) upon trust to pay the income as received during the joint lives of the husband and wife to the wife for her separate use, but without power of anticipation, and after her death then upon trust for the husband for life, and after his death in trust for all or any of such one or more of the issue of the said intended marriage as the wife shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, in trust for all or any such one or more of the children of the said marriage as shall attain the age of 21 years in equal shares. Provided always that no child who, or whose issue shall take any part of the trust funds under any such appointment as aforesaid, shall be entitled to any share of the unappropriated part of the trust funds, without bringing the share appropriated to him or her or his or her issue into hotchpot. Provided also that the trustees may at any time or times, with the consent in writing of the wife, and after her death in their discretion, raise any part or parts not exceeding in the whole two-thirds of the then expectant, presumptive or vested share of any child or issue under the trusts hereinbefore declared, and apply the same for his or her advancement or benefit. And it is hereby declared, that if there shall be no child of the said marriage that shall attain the age of 21 years, then, subject to the trusts hereinbefore declared, the trustees shall hold the trust funds and the income thereof in trust for such persons and for such purposes as the wife shall by deed or

will appoint; and in default of such appointment, and so far as any such appointment shall not extend, in trust for such person or persons as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the wife, had she died possessed thereof, and without having been married, in the shares in which they would have been entitled under the said statutes. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the husband, as beneficial owner, doth hereby assign and convey unto the trustees the plate, furniture and effects mentioned in the schedule hereto, to be holden by them upon trust, to permit the same to remain in the possession and to be enjoyed by the husband and the wife during their joint lives, and after the death of either of them in trust for the survivor absolutely. And the husband doth hereby covenant with the trustees that he will at all times hereafter on their request assign and convey to the trustees all furniture and other articles for household use hereafter at any time during the marriage acquired by him, to be held by the trustees upon the same trusts as are hereinbefore declared in respect of the furniture mentioned in the schedule hereto. And also that he will insure all the above-mentioned furniture, chattels and effects from fire in the full value thereof, and will hand over to the trustees the policy of such insurance, and the receipts for all the premiums from time to time payable upon the same, seven clear days at the least before the expiration of the days of grace, and will apply all moneys receivable under any such insurance as aforesaid in the restoration of the above-mentioned furniture, chattels and effects. And it is hereby further agreed that the power of appointing a new trustee shall be exerciseable by the wife during her life, and that upon every appointment of trustees the number of trustees may be increased or lessened, but not to be less than two.

In witness, &c.

SCHEDULE.

No. 45.

Deed converting a Long Term into a Fee Simple.

TO ALL TO WHOM THESE PRESENTS SHALL COME, *A. B.*, of sends greeting. Whereas, by an indenture of

lease dated the day of and made between of the one part and of the other part, All that, &c. (*parcels*), were demised unto *A. B.*, his executors, administrators and assigns, from the day of , for the term of years, subject to the yearly rent of a peppercorn, if demanded. And whereas the residue of the term created by the said lease is now vested in the said *A. B.* absolutely, and the said *A. B.* is beneficially entitled to the possession of the land demised by the said lease. NOW THESE PRESENTS WITNESS, that the said *A. B.* doth hereby declare, that from and after the execution of these presents the term created by the said lease shall be and the same is hereby enlarged into a fee simple.

In witness, &c.

No. 46.

Acknowledgment of right to production of Title Deeds.

Whereas, *A. B.*, of has sold to *C. D.*, of the freehold lands known as and the documents mentioned in the schedule hereto are retained by the said *A. B.*, as they relate as well to other lands as the lands sold. Now the said *A. B.* hereby acknowledges the right of the said *C. D.* to production of the said documents and to delivery of copies thereof—(*if it is desired to include an undertaking for safe custody add*)—and the said *A. B.* hereby undertakes for the safe custody thereof.

Dated this day of 188

SCHEDULE.

No. 47.

Memorandum of Acknowledgment. (*a*).

"A."

This deed, marked "A," was this day produced before me and acknowledged by (*wife*), the wife of (*husband*) therein named to be

(*a*) This memorandum is endorsed or written at the foot or in the margin of the deed.

her act and deed, previously to which acknowledgment the said (*wife*) was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed, and of her consent thereto, and declared the same to be freely and voluntarily executed by her.

Dated this day of , 1883.

[*Signature of Judge or Commissioner, as the case may be.*]

No. 48.

Notice by Lessor to Lessee to Repair Premises.(*a*)

IN PURSUANCE of the provisions of the Conveyancing and Law of Property Act, 1881 (*b*), and in pursuance of a covenant contained in an indenture of lease dated the day of 18 , and made between (*parties*) [as solicitor for and on behalf of] (*c*), I hereby give you notice that you have committed a breach of the lessee's covenant contained in the said indenture of lease, whereby the lessee covenanted to repair, maintain, and keep the messuage or dwelling-house or premises situate and being , and all fixtures and additions thereto, in good and substantial repair and condition, (*d*); and take notice that you are hereby required to thoroughly and substantially repair the said messuage or dwelling-house or premises, and particularly to do, in a good and workmanlike manner, the several repairs mentioned in the specification hereto annexed (*e*). And further take notice that the

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(*a*) This notice can be served by registered letter (sec. 67, sub-sec. 4).

(*b*) By sec. 14, before a lessor can take proceedings for breach of covenant, notice must be given to the lessee requiring him to remedy the breach if capable thereof. As most leases contain a provision for giving notice of want of repair, the reference to the Act is inserted to avoid the necessity of having to give a second notice before commencing proceedings.

(*c*) The words in brackets should be struck out if not necessary.

(*d*) In framing the notice it is advisable to follow the exact words of the covenant to repair.

(*e*) The time within which the work should be done will probably be fixed by the covenant.

said hereby requires you to pay £ as and by way of compensation and on account of all costs, charges and expenses to which he has or may be put in consequence of the aforesaid breach of covenant on your part. (*a*)

Dated this day of 18 .

To

No. 49.

Notice by Lessor to Lessee of Breach of the Covenant to Insure.

IN PURSUANCE of the provisions of the Conveyancing and Law of Property Act, 1881, as solicitor for and on behalf of , I hereby give you notice that you have committed a breach of the lessee's covenant contained in an indenture of lease dated the day of , 18 , and made between (*parties*) whereby the lessee covenanted to insure (*b*) and at all times to keep insured, in the joint names of the lessor and lessee, the premises demised by the said lease, situate and being from loss or damage by fire in the insurance office, in the sum of £ at the least. And take notice that the said hereby requires you to forthwith (*c*) insure the said premises in accordance with the aforesaid covenant. And further take notice, that the said hereby requires you to pay £ as and by way of compensation and on account of all costs, charges and expenses to which he

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(*a*) The sum to be asked by way of compensation must be fixed with care. In the event of the lessee remedying the breach in pursuance of the notice, it is impossible to say, in the absence of any settled practice, what amount a Court will or will not consider reasonable, but no doubt a fair sum may be charged for legal and surveyor's charges. Instead of fixing upon a sum in the notice, it may be sufficient to say, "And further take notice that the said hereby requires you to make reasonable compensation to him in respect of the aforesaid breach of covenant on your part, and on account of the costs, charges and expenses to which he has or may be put in consequence thereof."

(*b*) In framing the notice, it is advisable to follow the exact words of the covenant to insure.

(*c*) Sec. 14 does not require a time to be fixed by the lessor, but he will not be safe in bringing an action until he has allowed a reasonable time for the breach to be remedied. (*See* note to sec. 14.)

has or may be put in consequence of the aforesaid breach of covenant on your part (*a*).

Dated this day of , 18 .

No. 50.

Notice by Lessor to Lessee of Breach of Covenant to use Premises as a Private Dwelling-house.

IN PURSUANCE of the provisions of the Conveyancing and Law of Property Act, 1881, as solicitor for and on behalf of , I hereby give you notice that you have committed a breach of the covenant contained in an indenture of lease dated the day of 18 , and made between (*parties*) whereby the lessee covenanted to use the premises situate and being , demised by the said lease as and for a private dwelling-house only (*b*). And take notice, you are hereby required to discontinue, within one week from the date hereof, the trade or business of a , now carried on in or upon the demised premises. And further take notice, that the said hereby requires you to pay £ as and by way of compensation, and on account of all costs, charges and expenses to which he has or may be put, in consequence of the aforesaid breach of covenant on your part.

Dated this day of , 18 .

No. 51.

Affidavit verifying execution of Powers of Attorney.

I (*name, residence and description of deponent*), make oath and say :—

1. I saw (*name of appointor*), sign, seal, and as his act and deed deliver the indenture (*or deed poll*) hereunto annexed, marked with the letter "A."

2. The signature " " set and subscribed to the said indenture (*or deed poll*) is of the proper handwriting of the said (*appointor*).

" Sworn at, &c. }

(*a*) *See* note (*a*), on p. 319, to preceding Precedent.

(*b*) It is advisable to follow the exact words of the covenant.

APPENDIX.

LORD CRANWORTH'S ACT, 1860.

23 & 24 Vic. c. 145.

An Act to give to Trustees, Mortgagees, and others certain Powers now commonly inserted in Settlements, Mortgages and Wills.

28th August, 1860.

(*Parts* 2 *&* 3 *of this Act are repealed by* 44 *&* 45 *Vic. c.* 41, *s.* 71, *but all Acts done thereunder to* 31*st December*, 1881, *remain valid.*)

Whereas it is expedient that certain powers and provisions which it is now usual to insert in settlements, mortgages, wills, and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

Powers of Trustees for Sale, &c., and Trustees of renewable Leaseholds.

Trustees empowered to sell may sell in lots, and either by auction or private contract.

1. In all cases where by any will, deed, or other instrument of settlement it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally, or in any particular event, over any hereditaments named or referred to in or from time to time subject to the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such hereditaments be vested in them or not, to exercise such power of sale by selling such hereditaments, either together or in lots, and either by auction or private contract, and either at one time or at several times, and (in case the power shall expressly authorise an exchange) to exchange

any hereditaments which for the time being shall be subject to the uses or trusts aforesaid for any other hereditaments in England or Wales or in Ireland (as the case may be), and upon such exchange to give or receive any money for equality of exchange.

Sale may be made under special conditions, and trustees may buy in, &c.

2. It shall be lawful for the persons making any such sale or exchange to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale or exchange, as they shall think fit, and also to buy in the hereditaments or any part thereof at any sale by auction, and to rescind or vary any contract for sale or exchange, and to re-sell the hereditaments which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby, and no purchaser under any such sale shall be bound to inquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other hereditaments or otherwise.

Trustees exercising power of sale, &c., empowered to convey.

3. For the purpose of completing any such sale or exchange as aforesaid, the persons empowered to sell or exchange as aforesaid shall have full power to convey or otherwise dispose of the hereditaments in question, either by way of revocation and appointment of the use, or otherwise, as may be necessary.

Moneys arising from sales, &c., to be laid out in other lands;

4. The money so received upon any such sale or for equality of exchange as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale or exchange, or if no such indication be therein contained as to all or any part of such money, then the same shall with all convenient speed be laid out in the purchase of other hereditaments in fee simple in possession to be situate in England or Wales or in Ireland (as the case may be), or of lands of a leasehold or copyhold or customary tenure which, in the opinion of the persons making the purchase, are convenient to be held therewith or with any other hereditaments for the time being, subject to the subsisting uses or trusts of the same will, deed, or other instrument of settlement in which the power of sale or exchange was contained; and all such hereditaments so to be purchased or taken in exchange as aforesaid as shall be freeholds of inheritance shall be settled and assured to the uses, upon and for the trusts, intents, and purposes, and with, under and subject to the powers, provisoes and declarations to which the hereditaments sold or given in exchange were or would have been subject, or as near thereto as the deaths of parties and other intervening accidents will admit of, but not so as to increase or multiply charges; and all such hereditaments so to be purchased or taken in exchange as aforesaid as shall be of leasehold or copyhold or customary tenure shall be settled and assured upon and for such

trusts, intents and purposes, and with, under and subject to such powers, provisoes and declarations as shall as nearly as may be correspond with and be similar to the aforesaid uses, trusts, intents and purposes, powers, provisoes and declarations, but not so as to increase or multiply charges, and so that if any of the hereditaments so to be purchased shall be held by lease for years, the same shall not vest absolutely in any tenant in tail by purchase who shall not attain the age of 21 years; and any such purchase as aforesaid may be made subject to any special conditions as to title or otherwise. Provided that no leasehold tenement shall be purchased under the powers hereinbefore contained which is held for a less period than 60 years.

5. Provided nevertheless, that it shall be lawful for the persons exercising any such power as aforesaid, if they shall think fit, to apply any money to be received upon any sale or for equality of exchange as aforesaid, or any part thereof, in lieu of purchasing lands therewith, in or towards paying off or discharging any mortgage or other charge or incumbrance which shall or may affect all or any of the hereditaments which shall then be subject to the same uses or trusts as those to which the hereditaments sold or given in exchange were or was subject.

or in payment of incumbrances.

6. No money arising from any such sale or exchange of lands or hereditaments in England or Wales shall be laid out in the purchase of lands or hereditaments situate elsewhere than in England or Wales, and no lands situate in England or Wales shall, under any such power as aforesaid, be exchanged for any lands or hereditaments situate elsewhere than in England or Wales; and no money arising from any such sale or exchange of lands in Ireland shall be laid out in the purchase of lands or hereditaments situate elsewhere than in Ireland, and no lands or hereditaments situate in Ireland shall, under any such power as aforesaid, be exchanged for any lands or hereditaments situate elsewhere than in Ireland.

Money arising from sales, &c., not to be laid out, nor lands exchanged, elsewhere than in the country in which lands sold or exchanged is situated.

7. Until the money to be received upon any sale or for equality of exchange as aforesaid shall be disposed of in the manner herein mentioned, the same shall be invested at interest for the benefit of the same parties who would be entitled to the hereditaments to be purchased therewith as aforesaid, and the rents and profits thereof in case such purchase and settlement as aforesaid were then actually made.

Until purchase of lands, &c., money to be invested at interest.

8. It shall be lawful for any trustees of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract or by custom or usual practice, if they shall in their discretion think fit, and it shall be the duty of such trustees, if thereunto required by any person having any beneficial interest, present or future or contingent, in such leaseholds, to use their best

Trustees of renewable leaseholds may renew.

endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose it shall be lawful for any such trustees from time to time to make or concur in making such surrender of the lease for the time being subsisting, and to do all such other acts as shall be requisite in that behalf; but this section is not to apply to any case where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same.

Money for equality of exchange and for renewal of leases may be raised by mortgage, &c.

9. In case any money shall be required for the purpose of paying for equality of exchange as aforesaid, or for renewal of any lease as aforesaid, it shall be lawful for the persons effecting such exchange or renewal to pay the same out of any money which may then be in their hands in trust for the persons beneficially interested in the lands to be taken in exchange, or comprised in the renewed lease, whether arising by any of the ways and means hereinbefore mentioned or otherwise, and notwithstanding the provisions for the application of money arising from sales or exchanges hereinbefore contained; and if they shall not have in their hands as aforesaid sufficient money for the purposes aforesaid, it shall be lawful for such persons to raise the money required by mortgage of the hereditaments to be received in exchange or contained in the renewed lease (as the case may be), or of any other hereditaments for the time being subject to the subsisting uses or trusts to which the hereditaments taken in exchange or comprised in the renewed lease (as the case may be) shall be subject, and for the purpose of effecting such mortgage such persons shall have the same powers of conveying or otherwise assuring as are herein contained with reference to a conveyance on sale; and no mortgagee advancing money upon such mortgage purporting to be made under this power shall be bound to see that such money is wanted, or that no more is raised than is wanted for the purposes aforesaid.

No sale, &c., to be made without consent of tenant for life, &c.

10. No such sale or exchange as aforesaid, and no purchase of hereditaments out of money received on any such sale or exchange as aforesaid, shall be made without the consent of the person appointed to consent by the will, deed or other instrument, or if no such person be appointed, then of the person entitled in possession to the receipt of the rents and profits of such hereditaments, if there be such a person under no disability; but this clause shall not be taken to require the consent of any person where it appears from the will, deed or other instrument to have been intended that such sale, exchange or purchase should be made by the person or persons making the same without the consent of any other person.

PART II.

(Repealed by 44 & 45 Vic. c. 41, sec. 71.)

Powers of Mortgagees.

11. *Where any principal money is secured or charged by deed on any hereditaments of any tenure, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns, shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers, to the same extent (but no more) as if they had been in terms conferred by the person creating the charge; namely,—*

1st. *A power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner:*

2nd. *A power to insure and keep insured from loss or damage by fire the whole or any part of the property (whether affixed to the freehold or not) which is in its nature insurable, and to add the premiums paid for any such insurance to the principal money secured at the same rate of interest:*

3rd. *A power to appoint or obtain the appointment of a receiver of the rents and profits of the whole, or any part of the property in manner hereinafter mentioned.*

12. *Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.*

13. *No such sale as aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property; but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorise the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorised exercise of such power shall have his remedy in damages against the person selling.*

14. *The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows: First, in payment of all the expenses incident to the sale or incurred in any attempted sale; secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and, thirdly, in discharge of all the principal moneys then due in respect of such charge; and the residue of such money shall be paid to the person entitled to the property subject to the charge, his heirs, executors, administrators, or assigns, as the case may be.*

15. *The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold, for all the estate and interest therein, which the person who created the charge had power to dispose of, except that in the case of copyhold hereditaments the beneficial interest only shall be conveyed to and vested in the purchaser by such deed.*

16. *At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover, from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, surrendered, or assigned to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of, and where the legal estate shall be outstanding in a trustee the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.*

17. *Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.*

18. *Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.*

19. *Every receiver appointed as aforesaid shall have power to*

demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver by action, suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

20. *Every receiver appointed as aforesaid may be removed by the like authority or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.*

21. *Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.*

22. *Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge (whether affixed to the freehold or not) which is in its nature insurable.*

23. *Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any, and in the next place in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof, and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.*

24. *The powers and provisions contained in this part of this Act relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.*

PART III.

(Repealed by 44 & 45 Vic. c. 41, sec. 71.)

Provisions as to Investment of Trust Funds, Appointment and Powers of Trustees and Executors, &c.

25. *Trustees having trust money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to*

invest the same in any of the Parliamentary stocks or public funds, or in Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature: Provided always, that no such original investment as aforesaid (except in the Three per cent. Consolidated Bank Annuities), and no such change of investment as aforesaid shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

26. *In all cases where any property is held by trustees in trust for an infant, either absolutely, or contingently on his attaining the age of 21 years, or on the occurrence of any event previously to his attaining that age, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such infant, or otherwise to apply for or towards the maintenance or education of such infant, the whole or any part of the income to which such infant may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulation shall have arisen: Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.*

27. *Whenever any trustee, either original or substituted, and whether appointed by the Court of Chancery or otherwise, shall die, or desire to be discharged from or refuse or become unfit or incapable to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person, or if no such person able and willing to act, then for the surviving or continuing trustee or trustees for the time being, or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid; and so often as any new trustee or trustees shall be so appointed as aforesaid, all the trust property (if any) which for the time being shall be vested*

in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed, assigned, and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely, or jointly with the surviving or continuing trustees or trustee, as the case may require; and every new trustee or trustees to be appointed as aforesaid, as well before as after such conveyance or assignment as aforesaid, and also every trustee appointed by the Court of Chancery either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument creating the trust.

28. *The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.*

29. *The receipts in writing of any trustees or trustee for any money payable to them or him by reason or in the exercise of any trusts or powers reposed or vested in them or him shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.*

30. *It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security, real or personal, for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.*

PART IV.

General Provisions.

Tenants for life, &c., may execute powers notwithstanding incumbrances.

31. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of land or personal property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

Powers, &c., hereby given may be negatived by express declaration.

32. None of the powers or incidents hereby conferred or annexed to particular offices, estates, or circumstances shall take effect or be exerciseable if it is declared in the deed, will, or other instrument creating such offices, estates, or circumstances, that they shall not take effect; and where there is no such declaration, then if any variations or limitations of any of the powers or incidents hereby conferred or annexed are contained in such deed, will, or other instrument, such powers or incidents shall be exerciseable or shall take effect only subject to such variations or limitations.

No persons other than those entitled under the settlement, &c., to be affected.

33. Nothing in this Act contained shall be deemed to empower any trustees or other persons to deal with or affect the estates or rights of any persons soever, except to the extent to which they might have dealt with or affected the estates or rights of such persons if the deed, will, or other instrument under which such trustees or other persons are empowered to act had contained express powers for such trustees or other persons so to deal with or affect such estates or rights.

Commencement of Act.

34. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after the passing of this Act, or under a will or codicil confirmed or revived by a codicil executed after that date.

Extent of Act.

35. This Act shall not extend to Scotland.

THE VENDOR AND PURCHASER ACT, 1874.

37 & 38 Vic. c. 78.

An Act to Amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [*7th August*, 1874.]

Whereas it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Forty years substituted for sixty years as the root of title.

1. In the completion of any contract of sale of land made after the 31st day of December, 1874, and subject to any stipulation to the contrary in the contract, 40 years shall be substituted as the period of commencement of title which a purchaser may require in place of 60 years, the present period of such commencement; nevertheless earlier title than 40 years may be required in cases similar to those in which earlier titie than 60 years may now be required.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

Rules for regulating obligations and rights of vendor and purchaser.

1st. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

2nd. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

3rd. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

4th. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

5th. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Trustees may sell, &c., notwithstanding rules.

4. *The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust.*

Legal personal representative may convey legal estate of mortgaged property.

Repealed by 44 & 45 Vic. c. 41, sec. 31.

5. *Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee.*

Bare legal estate in fee simple to vest in executor or administrator.

This section is, as regards England, repealed by 38 & 39 Vic. c.

87, sec. 48, and, as regards Ireland, it is repealed by 44 & 45 Vic. c. 41, sec. 73.

Married woman who is a bare trustee may convey, &c.

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole.*

Protection and priority by legal estates and tacking not to be allowed.

7. *After the commencement of this Act, no priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every Court to this provision, although the person claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice: Provided always, that this section shall not take away from any estate, right, title, or interest, any priority or protection which, but for this section, would have been given or allowed thereto as against any estate or interest existing before the commencement of this Act.*

This section is, as regards England, repealed by 38 & 39 Vic. c. 87, sec. 129; and, as regards Ireland, by 44 & 45 Vic. c. 41, sec. 73.

Non-registration of will in Middlesex, &c., cured in certain cases.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him, shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Extent of Act.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

THE SETTLED ESTATES ACT, 1877.

40 & 41 Vic. c. 18.

An Act to consolidate and amend the Law relating to Leases and Sales of Settled Estates. [28*th June*, 1877.]

Whereas it is expedient to consolidate and amend the law relating to leases and sales of settled estates: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited for all purposes as "The Settled Estates Act, 1877."

Interpretation of "settlement" and "settled estates."

2. The word "settlement," as used in this Act, shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

The term "settled estates," as used in this Act, shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement; and for the purposes of this Act a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life.

All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement.

In determining what are settled estates within the meaning of this Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

Interpretation of "the Court."

3. The expression "the Court" in this Act shall, so far as relates to estates in England, mean the High Court of Justice, and all causes and matters in respect of such estates commenced or continued under this Act shall, subject to the provisions of the Judicature Acts, be assigned to the Chancery Division of the High Court of Justice, in like manner as if such causes and matters had arisen under an Act of Parliament by which, prior to the passing of the Judicature Acts, exclusive jurisdiction in respect to such causes and matters had been given to the Court of Chancery, or to any judges or judge thereof respectively.

The expression "the Court" in this Act shall, so far as relates to estates in Ireland, mean the Court of Chancery in Ireland.

Power to authorise leases of settled estates.

4. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to authorise leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed:—

1st. Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding, for an agricultural or occupation lease, so far as relates to estates in England, 21 years, or so far as relates to estates in Ireland, 35 years, and for a mining lease or a lease of water mills, way leaves, water leaves, or other rights or easements, 40 years, and for a repairing lease, 60 years, and for a building lease, 99 years: Provided always, that any such lease (except an agricultural lease) may be for such term of years as the Court shall direct, where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term hereinbefore specified in that behalf:

2ndly. On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener without taking any fine or other benefit in the nature of a fine: Provided always, that in the case of a mining lease, a repairing lease or a building lease, a peppercorn rent or any smaller rent than the rent to be ultimately made payable may, if the Court shall think fit so to direct, be made payable during all or any part of the first five years of the term of the lease:

3rdly. Where the lease is of any earth, coal, stone or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth, coal, stone, or mineral for his own benefit, one fourth part of such rent, and otherwise three-fourth parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid

portion of the rent by the appointment of trustees or otherwise as the Court shall deem expedient.

4thly. No such lease shall authorise the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the lease:

5thly. Every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of 28 days after it becomes due, or for some less period to be specified in that behalf.

Leases may contain special covenants.

5. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased.

6. The power to authorise leases conferred by this Act shall extend to authorise leases either of the whole or any parts of the settled estates, and may be exercised from time to time.

Leases may be surrendered and renewed.

7. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorise leases conferred by this Act shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

Power to authorise leases to extend to preliminary contracts.

8. The power to authorise leases conferred by this Act shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

Powers of leasing to include powers to lords of settled manors to give licences to their copyhold or customary tenants to grant leases.

9. All the powers to authorise and to grant leases contained in this Act shall be deemed to include respectively powers to authorise the lords of settled manors and powers to the lords of settled manors to give licences to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorised or granted of freehold hereditaments under this Act.

Mode in which leases may be authorised.

10. The power to authorise leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing, in conformity with the provisions of this Act, shall be vested in trustees in manner hereinafter mentioned.

What evidence to be produced on an application to authorise leases.

11. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorised.

After approval of a lease, Court to direct who shall be the lessor.

12. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Powers of leasing may be vested in trustees.

13. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons, and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the Court may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Conditions that leases be settled by the Court not to be inserted in orders made under this Act.

14. Provided always, that in orders under this Act for vesting any powers of leasing in any trustees or other persons, no conditions shall be inserted requiring that the leases thereby authorised should be submitted to or be settled by the Court, or a judge thereof, or be made conformable with a model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the Court that there is some special reason rendering the insertion of such a condition necessary or expedient.

Conditions where inserted may be struck out.

15. Provided also, that in all cases of orders (whether under this Act or under the corresponding enactment of the Acts hereby repealed) in which any such condition as last aforesaid shall have been inserted, it shall be lawful for any party interested to apply to the Court to alter and amend such order by striking out such condition, and the Court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but nothing herein contained shall make it obligatory on the Court to act under this provision in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the Court that there is any special reason why in the case in question such a condition is necessary or expedient.

16. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to authorise a sale of the whole or any parts of any settled estates or of any timber (not being ornamental timber) growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

Court may authorise sales of settled estates and of timber.

17. *It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties who are or may hereafter be entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to sanction any action, defence, petition to Parliament, parliamentary opposition, or other proceedings appearing to the Court necessary for the protection of any settled estate, and to order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any moneys, or investments representing moneys, liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income.*

Proceedings for Protection.

18. When any land is sold for building purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

Consideration for land sold for building may be a fee-farm rent.

19. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Minerals, &c., may be excepted from sales.

20. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the

Court may authorise dedication of any part of settled estates for streets, roads and other works.

appointment of new trustees when required, as by the Court shall be deemed advisable.

As to laying out and making and executing and maintaining streets, roads, and other works, and expenses thereof.

21. Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys, or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations during such period or periods of time as to the Court shall seem advisable.

How sales and dedications are to be effected under the direction of the Court.

22. On every sale or dedication to be effected as hereinbefore mentioned the Court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Application by petition to exercise powers conferred by this Act.

23. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment would be entitled to such estates for a term of years determinable with any life, or for an estate for any life or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

With whose consent such application to be made.

24. Subject to the exceptions hereinafter contained, every application to the Court must be made with the concurrence or consent of the following parties, namely:—

Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such

tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail;

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

Court may dispense with consent in respect of certain estates.

25. Provided always, that where an infant is tenant in tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person, if only one, or all or any of the persons, if more than one, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant.

Notice to be given to persons who do not consent to or concur in the application.

26. Provided always, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the Court to which the application shall be made shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interest, so far as they may be affected by such application, to be dealt with by the Court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with notice under certain circumstances.

27. Provided also, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject-matter of the application, then and in any such case the Court, if it shall think fit, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with consent, having

28. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid

regard to the number and interests of parties.

shall not have been obtained or shall have been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto

Petition may be granted without consent, saving rights of non-consenting parties.

29. Provided nevertheless, that it shall be lawful for the Court, if it shall think fit, to give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.

Notice of application to be served on all trustees, &c.

30. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the Court ought to be so served, unless the Court shall think fit to dispense with such notice.

Notice of application to be given in newspapers if Court direct.

31. Notice of any application to the Court under this Act shall, if the Court shall so direct, but not otherwise, be inserted in such newspapers as the Court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act; and the Court is hereby authorised to permit such person or corporation to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise, and in such manner as it shall think fit.

No application under this Act to be granted where a similar application has been rejected by Parliament.

32. The Court shall not be at liberty to grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either house of Parliament for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the Bill may have been referred.

Notice of the exercise of powers to be given as directed by the Court.

33. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

34. All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same, so far as relates to estates in England, shall be paid into Court *ex parte* the applicant in the matter of this Act, and so far as relates to estates in Ireland, shall be paid into the Bank of Ireland, to the account of the Accountant-General, *ex parte* the applicant in the matter of this Act; and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes, namely,—

Payment and application of moneys arising from sales or set aside out of rent, &c., reserved on mining leases.

So far as relates to estates in England the purchase or redemption of the land-tax, and so far as relates to estates in Ireland the purchase or redemption of rentcharge in lieu of tithes, Crown rent, or quit rent.

The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

35. The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

Trustees may apply moneys in certain cases without application to Court.

36. Until the money can be applied as aforesaid, the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorised to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested, and dividends to be paid to parties entitled.

37. Where any purchase-money paid into Court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties

Court may direct application of money in respect of leases or reversions as may appear just.

interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court may exercise powers repeatedly, but may not exercise them if expressly negatived.

38. The Court shall be at liberty to exercise any of the powers conferred on it by this Act, whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not; but no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

Court not to authorise any act which could not have been authorised by the settlor.

39. Nothing in this Act shall be construed to empower the Court to authorise any lease, sale, or other act, beyond the extent to which in the opinion of the Court the same might have been authorised in and by the settlement by the settlor or settlors.

Acts of the Court in professed pursuance of this Act not to be invalidated.

40. After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorise the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

Costs.

41. It shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the Court shall direct.

Rules and orders.

42. General rules and orders of Court for carrying into effect the purposes of this Act, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters, shall be made so far as relates to pro-

ceedings in England by any three or more of the following persons, of whom the Lord Chancellor shall be one—namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and so far as relates to proceedings in Ireland by any three or more of the following persons, of whom the Lord Chancellor of Ireland shall be one—namely, the Lord Chancellor of Ireland, the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and four other judges of the Superior Courts in Ireland to be from time to time appointed for the purpose by the Lord Chancellor of Ireland in writing under his hand, such appointment to continue for such time as shall be specified therein, and such rules and orders may from time to time be rescinded or altered by the like authorities respectively, and all such rules and orders shall take effect as general orders of the Court.

Rules and orders to be laid before Parliament.

43. All general rules and orders made as aforesaid shall be laid before each House of Parliament within 40 days after the making thereof, if Parliament is then sitting, or if not, within 40 days after the commencement of the then next ensuing session, and if an Address is presented to Her Majesty by either House of Parliament within the next subsequent 40 days on which the said House shall have sat, praying that any such rule or order may be annulled, Her Majesty may thereupon, by Order in Council, annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Concurrent jurisdiction of the Court of Chancery of the County Palatine of Lancaster.

44. The powers vested in the High Court of Justice by this Act may, so far as relates to estates within the County Palatine of Lancaster, be exercised also by the Court of Chancery of the said County Palatine; and general rules and orders of Court for the purposes aforesaid, so far as relates to proceedings in the said Court of the said County Palatine, shall be made by the Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of any one or more of the persons authorised under this Act to concur in the making of general rules and orders relating to proceedings in England, and also with the advice and consent of the Vice-Chancellor of the said County Palatine.

Application for lease or sale in Ireland may be made to Landed Estates Court.

45. It shall and may be lawful for any person who under the provisions of this Act may make an application to the Court of Chancery in Ireland for the lease or sale of a settled estate, instead

of making such application to the said Court of Chancery in Ireland, to apply to the Landed Estates Court, Ireland, for the purpose of having the lease or sale of such settled estate under the said last-mentioned Court; and thereupon it shall be lawful for the said Landed Estates Court, Ireland, to exercise all the powers conferred upon the Court of Chancery in Ireland in relation to leases or sales of such nature under the provisions of this Act, save that the judge in the case of a sale shall himself execute the conveyance to the purchaser under such sale, and save that such conveyance shall have the like operation and effect, and confer such indefeasible title to the purchaser as if such sale had been made and such conveyance had been executed upon an application for the sale of an incumbered estate under the Act of the 21st and 22nd years of Her Majesty, cap. 72: Provided always, that the Landed Estates Court, Ireland, shall make such investigation of the title and circumstances of the said estates as shall appear expedient, and also in cases of sales as in other cases preliminary to sales conducted in the said Landed Estates Court, Ireland: Provided also, that every decision and order in the course of such proceedings shall be subject to appeal to the Court of Appeal in Chancery as in other cases under the said Act.

Tenants for life &c., may grant leases for 21 years.

46. It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for any life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seised in fee, without any application to the Court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding 21 years so far as relates to estates in England, and 35 years so far as relates to estates in Ireland, to take effect in possession at or within one year next after the making thereof; provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on non-payment of the rent for a period of 28 days after it becomes due, or for some less period to be specified in that behalf; and provided a counterpart of every deed of lease be executed by the lessee.

47. Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled, and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Against whom such leases shall be valid.

48. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Evidence of execution of counterpart lease by lessee.

49. All powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Act may be given to guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents: Provided nevertheless, that in the cases of infant or lunatic tenants in tail no application to the Court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court.

Provision as to infants, lunatics, &c.

50. Where a married woman shall apply to the Court, or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

A married woman applying to the Court, or consenting to be examined apart from her husband.

51. The examination of such married woman when resident within the jurisdiction of the Court to which such application is made, shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose, who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same. And when the married woman is resident out of the jurisdiction of the Court to which such application is made, her exami-

Examination of married woman how to be made when residing within the jurisdiction of the Court, and how when residing without such jurisdiction.

nation may be made by any person appointed for that purpose by the Court, whether he is or is not a solicitor of the Court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction. And the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the Court.

As to application by or consent of married women, whether of full age or under age.

52. Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

No obligation to make or consent to application, &c.

53. Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the Court or to exercise any power.

Tenants for life, &c., to be deemed entitled notwithstanding incumbrances.

54. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

Exception as to entails created by Act of Parliament.

55. Provided always, that nothing in this Act shall authorise any sale or lease beyond the term of 21 years of any settled estates in respect of which, under the Act of the 34th and 35th years of King Henry VIII. c. 20, "to embar feigned recovery of lands wherein the "King's Majesty is in reversion," or under any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the Crown.

Saving rights of lords of manors.

56. Nothing in this Act shall authorise the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

To what settlements this Act to extend.

57. This Act shall, except as hereinafter provided, apply to all matters existing at the time of the passing of this Act, whether proceedings are actually pending or not, and any proceedings in any such matter may be continued or taken under this Act as if the matter originated under this Act, or may be continued or taken under the Acts hereby repealed, or partly under this Act and partly under the said repealed Acts as occasion may require: Provided always, that the provisions in this Act contained respecting demises to be made without application to the Court shall extend only to settlements made after the 1st day of November, 1856.

58. The Acts specified in the schedule to this Act are hereby repealed: Provided always, that this repeal shall not affect anything done or any proceeding taken under any enactment hereby repealed. Repeal of Acts specified in schedule.

59. Nothing in this Act shall interfere with the exercise of any powers to authorise or grant leases conferred by any Act of Parliament not expressly repealed by this Act. Saving.

60. This Act shall not extend to Scotland. Extent of Act.

61. This Act shall commence on the 1st day of November 1877. Commencement of Act.

SCHEDULE.

Session and Chapter.	Title or Short Title.
19 & 20 Vic. c. 120 -	An Act to facilitate leases and sales of Settled Estates.
21 & 22 Vic. c. 77 -	An Act to amend and extend the Settled Estates Act of 1856.
27 & 28 Vic. c. 45 -	An Act to further amend the Settled Estates Act of 1856.
37 & 38 Vic. c. 33 -	The Leases and Sales of Settled Estates Amendment Act, 1874.
39 & 40 Vic. c. 30 -	The Settled Estates Act, 1876.

THE SETTLED LAND ACT, 1882.

45 & 46 Vic. c. 38.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon.

[10*th August*, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

1.—(1.) This Act may be cited as the Settled Land Act, 1882. Short title; commencement; extent.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the 31st day of December, 1882, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

II.—Definitions.

Definition of settlement, tenant for life, &c.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being under a settlement beneficially entitled to possession of settled land for his life, is, for purposes of this Act, the tenant for life of that land, and the tenant for life under that settlement.

(6.) If in any case there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such, notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty or other reservation, by the acre, or the ton, or otherwise, and in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a mining lease is a lease for any mining purpose or purposes connected therewith, and includes a grant or licence for any mining purposes:

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners:

(xi.) Person includes corporation.

III.—Sale; Enfranchisement; Exchange; Partition.

General Powers and Regulations.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and

Powers to tenant for life to sell, &c.

(ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Regulations respecting sale, enfranchisement, exchange and partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

Special Powers.

Transfer of incumbrances on land sold, &c.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether

already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

IV.—Leases.

General Powers and Regulations.

Power for tenant for life to lease for ordinary or building or mining purposes.

6.—A tenant for life may lease the settled land, or any part thereof, or any easement, right or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

(i.) In case of a building lease, ninety-nine years:

(ii.) In case of a mining lease, sixty years:

(iii.) In case of any other lease, twenty-one years.

Regulations respecting leases generally.

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and Mining Leases.

Regulations respecting building leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connection with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire

amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than 10 shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations respecting mining leases.

9.—(1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connection with mining purposes.

Valuation of building or mining lease according to circumstances of district.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorise generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rent, secured by condition of re-entry,

or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Part of mining rent to be set aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste in respect of minerals, three-fourth parts of the rent, and otherwise one-fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Special Powers.

Leasing powers for special objects.

12.—The leasing power of a tenant for life extends to the making of—

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title; and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and

(iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

Surrenders.

Surrender and new grant of leases.

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

Copyholds.

Power to grant to copyholders licences for leasing.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

V.—Sales, Leases, and other Dispositions.

Mansion and Park.

Restriction as to mansion, house, park, &c.

15.—Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the court.

Streets and open Spaces.

Dedication for streets, open spaces, &c.

16.—On or in connection with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

(i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving or other works necessary or proper in connection therewith; and

(ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any Company or public body, on trusts or subject to provisions for securing the continued

appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Surface and Minerals apart.

Separate dealing with surface and minerals, with or without way-leaves, &c.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

Mortgage for equality money, &c.

18.—Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

Undivided Share.

Concurrence in exercise of powers as to undivided share

19.—Where the settled land comprises an undivided share in land, or under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Conveyance.

Completion of sale, lease, &c., by conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges

sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the Court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the Court rolls.

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

Capital money under Act; investment, &c., by trustees or Court.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

(i.) In investment on Government securities, or on other securities on which the trustees of the settlement are

by the settlement or by law authorised to invest trust-money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway Company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorised by this Act:

(iv.) In payment for equality of exchange or partition of settled land:

(v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:

(vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life:

(vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land:

(viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land, for mining or other purposes:

(ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge:

(x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act:

(xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations respecting investment, devolution, and income of securities, &c.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act, while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investment in land in England.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorises the same.

Settlement of land purchased, taken in exchange, &c.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and

circumstances permit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so, nevertheless, that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

VII.—Improvements.

Improvements with Capital Trust Money.

Description of improvements authorised by Act.

25.—Improvements authorised by this Act are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

(i.) Drainage, including the straightening, widening, or deepening of drains, streams and watercourses:

(ii.) Irrigation; warping:

(iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure:

(iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water:

(v.) Groynes; sea walls; defences against water:

(vi.) Inclosing; straightening of fences; re-division of fields:

(vii.) Reclamation; dry warping:

(viii.) Farm roads; private roads; roads or streets in villages or towns:

(ix.) Clearing; trenching; planting:

(x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:

(xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes:

(xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:

(xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:

(xiv.) Tramways; railways; canals; docks:

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:

(xvi.) Markets and market-places:

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connection with the conversion of land into building land:

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connection with any of the objects aforesaid:

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connection with development of mines:

(xx.) Reconstruction, enlargement, or improvement of any of those works.

Approval by Land Commissioners of scheme for improvement and payment thereon.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees

may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

(i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorising the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Act, or in contributing to the cost thereof.

Obligation on tenant for life and successors to maintain, insure, &c.

28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount if any, as the Commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improve-

ment executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

Execution and Repair of Improvements.

Protection as regards waste in execution and repair of improvements.

29.—The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorised by this Act, or inspect, maintain, and repair the same, and for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

"*Improvement of Land Act*, 1864."

Extension of 27 & 28 Vic., c. 114, s. 9.

30.—The enumeration of improvements contained in sec. 9 of the "Improvement of Land Act, 1864," is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorised by this Act.

VIII.—CONTRACTS.

Power for tenant for life to enter into contracts.

31.—(1.) A tenant for life—

(i.) May contract to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such

consideration if paid in money, shall be capital money arising under this Act; and

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

IX.—Miscellaneous Provisions.

Application of money in Court under Lands Clauses and other Acts, 8 & 9 Vic. c. 18; 23 & 24 Vic. c. 106; 32 & 33 Vic., c. 18; 40 & 41 Vic. c. 18.

32.—Where, under an Act incorporating or applying, wholly or in part, the "Lands Clauses Consolidation Acts, 1845, 1860, and 1869," or under the "Settled Estates Act, 1877," or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in Court.

Application of money in hands of trustees under powers of settlement.

33.—Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion.

34.—Where capital money arising under this Act is purchase-money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Cutting and sale of timber, and part of proceeds to be set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Proceedings for protection or recovery of land settled or claimed as settled.

36.—The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, Parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirlooms.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any

other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

X.—Trustees.

Appointment of trustees by Court.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

Number of trustees to act

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees receipts.

40.—The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection of each trustee individually.

41.—Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

Protection of trustees generally.

42.—The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding or thing, as they might make, bring, take or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

Trustees reimbursement.

43.—The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Reference of differences to Court.

44.—If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

Notices to trustees.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last-known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

XI.—Court; Land Commissioners; Procedure.

Regulations respecting payments into Court, applications, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application; and may, if it thinks fit, order that all or any of those costs, charges or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the "Appellate Jurisdiction Act, 1876," as altered by section nineteen of the "Supreme Court of Judicature Act, 1881," and may be made accordingly. 39 & 40 Vic. c. 59. 44 & 45 Vic. c. 68.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connection with which the personal chattels to be dealt with in the Court are settled.

Payment of costs out of settled property.

47.—Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the direction of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be

laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Constitution of Land Commissioners; their powers, &c.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise, any of those commissioners in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any Court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the "Improvement of Land Act, 1864;" and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them. 27 & 28 Vic. c. 114.

Filing of certificates, &c. of commissioners.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

XII.—Restrictions, Savings, and General Provisions.

Powers not assignable; contract not to exercise powers void.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the com-

mencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

Prohibition or limitation against exercise of powers void.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision against forfeiture.

52.—Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Tenant for life trustee for all parties interested.

53.—A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers, &c.

54.—On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Exercise of powers; limitation of provisions, &c.

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court of the Land Commissioners are exerciseable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may

respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exerciseable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

Additional or larger powers by settlement.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

XIII.—Limited Owners generally.

Enumeration of other limited owners, to have powers of tenant for life.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this

Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:

(ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:

(iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:

(iv.) A tenant for years determinable on life, not holding under a lease at a rent:

(v.) A tenant for the life of another, not holding merely under a lease at a rent:

(vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purposes.

(vii.) A tenant in tail after possibility of issue extinct:

(viii.) A tenant by the courtesy:

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

Infant absolutely entitled to be as tenant for life.

59.—Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for life, infant.

60.—Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this

Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Married woman, how to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a *feme sole*, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Tenant for life lunatic.

62.—Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

XV.—Settlement by way of Trusts for Sale.

Provision for case of trust to sell and re-invest in land.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of Court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the

benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement, there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land, and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or

devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

XVI.—REPEALS.

Repeal of enactments in schedule.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed, made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

XVII.—IRELAND.

Modifications respecting Ireland.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that division.

(4.) Any deed enrolled under this Act shall be enrolled in the Record and Writ Office of that division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the "Supreme Court of Judicature Act (Ireland), 1877," and may be made accordingly, at any time

40 & 41 Vic. c. 57.

after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exerciseable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

40 & 41 Vic. c. 56.

(7.) The provisions of Part II. of the "County Officers and Courts (Ireland) Act, 1877," relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exerciseable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the "County Officers and Courts (Ireland) Act, 1877."

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

REPEALS.

23 & 24 Vic. c. 15. in part.	An Act to give to trustees, mortgagees and others, certain powers now commonly inserted in settlements, mortgages, and wills - - - in part; namely,— Parts I. and IV. (being so much of the Act as is not repealed by the "Conveyancing and Law of Property Act, 1881").
27 & 28 Vic. c. 114. in part.	The "Improvement of Land Act, 1864," in part; namely,— Sections 17 and 18: Section 21 from "either by a party" to "benefice" or (inclusive); and from "or if the land owner" to "minor or minors" (inclusive); and "or circumstance" (twice): Except as regards Scotland.
40 & 41 Vic. c. 18. in part.	The "Settled Estates Act, 1877," in part; namely,— Section 17.

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